United States Court of Appeals

for the Second Circuit

APPENDIX

74-1327

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P065

IN THE

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

against

BENJAMIN MALLAH,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPELLANT'S APPENDIX.

Volume II—Pages 597 to 1210.

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THE COURT: Would you please pass that up here so I can be sure you are entitled to ask that question.

You may go into that without going into the detail, it being a collateral subject.

BY MR. DUKE:

Q Miss Weyl, with reference to visits by Mr. Lipsky to your apartment, were you asked these questions and did you give these answers in this courthouse last summer:

"Q. Was that in connection with some transaction involving narcotics that he first came to your apartment?

"A No.

"Q Just a social visit?

"A Yes"?

A Well, by --

Q Were you asked those questions and did you give those answers?

A Yes, I did. But it wasn't a social visit.

Q You didn't tell the truth last summer?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

A It was to do a favor for him and I don't think --

I didn't think at that time that was a social visit.

Q Were you under oath when you testified last summer?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

A He asked --

Q There is no question pending, Miss Weyl.

Miss Weyl, do you have several mutual friends and acquaintances, that is, mutual friends and acquaintances with Mr. Lipsky?

A Yes.

Q Is one of them a man named Ricky Cravera?

A No.

Q Miss Weyl, during the time that -- when Mr. Lipsky moved the narcotics into your apartment was he a friend of yours?

A Yes.

Q Miss Weyl, have you used a drug called Turanol?

A No.

Q Seconal?

A Yes.

Q Quaalude?

A A very long time ago, yes.

Q Valium?

A Yes. On a psychiatrist's prescription.

Q Nembutal?

A No.

Q LSD?

A No.

Q When was the last time you took any of these drugs?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained.

Q Have you taken any drugs today, Miss Weyl?

A No.

MR. LAVIN: Objection to the form of the question.

THE COURT: The question is answered.

When Mr. Lavin objects, will you please wait until I decide whether you should answer or not.

BY MR. DUKE:

Q Have you taken any pills today?

A No.

Q Have youtaken any since Friday?

A No. I don't take drugs any more.

Q What effect, if any, Miss Weyl, does Seconal

have on your memory?

A None at all.

MR. LAVIN: I object.

THE COURT: You were a little late.

Q What effect, if any, does Quaalude have on your memory?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Miss Weyl, have you ever had any -- within the last three years -- any delusions?

MR. LAVIN: Objection.

THE COURT: Overruled.

A Would you repeat the question, please.

THE COURT: In the last three years have you had any delusions?

THE WITNESS: No.

Q Have you had any hallucinations during the last three years?

A No.

Q Have you had any blackouts during the last three years?

A No.

Q Have you consulted any psychiatrists in the last three years?

A Yes.

Q Are you presently under the care of a psychiatrist?

A No.

Q When did you last consult a psychiatrist?

A On and off, two years ago.

Q During 1971?

A If that's the year, yes.

Q Did you consult a psychiatrist concerning any problems that you may have with your memory?

A No.

Q Did you consult him concerning any delusions or hallucinations you may have had?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Miss Weyl, do you know whether or not your attorney has discussed your testimony with Mr. Feffer?

MR. LAVIN: Objection.

THE COURT: Sustained as to form.

Q Miss Weyl, has your attorney discussed the case, your testimony, with Mr. Feffer?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained as to form.

Q Miss Weyl, are you testifying here of your own choice, of your own free will?

MR. LAVIN: Objection.

THE COURT: Overruled.

A I was subpoenaed to come and testify.

Q Miss Weyl, are you afraid of Barry Lipsky?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Miss Weyl, approximately how many times have you seen Mr. Lipsky in your life?

A Since when?

Q Since you first met him.

MR. LAVIN: Objection. Asked and answered.

THE COURT: As a preliminary question I will allow it, if it is preliminary and not intended to be repetitious and duplicative of Friday.

A I really don't know how many times.

Q More than 20 times?

A Yes. Twenty times.

Q And have you had conversations with him on each of those 20 times?

A I've spoken to him, yes. He is my friend.

Q And have you observed him in social situations?

A At discotheques. There was no social contact

with Barry Lipsky and I. Just as a friend.

Q Based upon your conversations with Mr. Lipsky and your observations of him, do you have an opinion as to whether or not he is of sound mind?

MR. LAVIN: Objection.

THE COURT: Sustained.

BY MR. DUKE:

Q Miss Weyl, will you tell the jury what effect, if any, as far as you are aware, barbiturates that you have taken have on your mind?

MR. LAVIN: Objection.

THE COURT: Sustained. You covered it this morning. I believe you covered it on Friday also.

MR. DUKE: I have no further questions, your Honor.

I would request that this witness be kept available in the event she may be called by the defense.

THE COURT: If you have any need for the witness, this is the time.

Any other examination by any other lawyer?

Mr. LaRossa, I think you passed on Friday.

Mrs. Rosner?

MRS. ROSNER: No questions, your Honor.

THE COURT: Mr. Peluso?

MR. PELUSO: No questions.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No questions.

REDIRECT EXAMINATION

BY MR. LAVIN:

Q After your testimony on Friday you had a conversation with me downstairs?

A Yes.

Q Was that about your personal problems?

MR. DUKE: Objection.

THE COURT: Sustained.

MR. LAVIN: I have no further questions.

THE COURT: You may step down.

THE WITNESS: I would like to know about the --

THE COURT: I think what you better do, Miss Weyl, is to discuss the problem you are presenting to me with your attorney. It really doesn't have to do with this case.

THE WITNESS: I did and he said if it seems to me it wasn't allowable in court.

THE COURT: You tell him that you reported that to me.

(Witness excused.)

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THE COURT: Next witness.

MR. LAVIN: Gertrude Keenan.

G E R T R U D E K E E N A N , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Mrs. Keenan, what is your occupation?

A I am a supervisor in a bank.

Q Where is that?

A 79th Street and Madison Avenue, Chase Manhattan Bank.

Q How long have you been employed by the Chase Manhattan Bank?

A 28 years.

Q Prior to your present branch duties, were you employed at another branch of the Chase Manhattan Bank?

A Yes, sir. 57th Street and Madison Avenue.

Q When was that?

A It was two years in October. I have been in this branch for two years.

Q Since October of 1971 you have been at your present branch?

A That's right.

Q Mrs. Keenan, I am going to show you Picture 178 of Government Exhibit 7 in evidence. Can you identify the person standing up, please, if you can?

A Yes.

Q Do you recognize that person?

A I do.

MR. LAVIN: Your Honor, may the record reflect I have shown the witness a picture, Government Exhibit 7 in evidence, of Barry Lipsky.

Q Do you recall having any transactions with that person at your bank?

A I did.

Q What branch was that?

A That was at 57th Street and Madison Avenue.

Q That was prior to October 1971?

A Yes.

Q Can you tell us the nature of those transactions?

MR. LaROSSA: Objection.

THE COURT: Overruled.

A Yes. He would come into the bank and he had twenties and tens and he wanted large bills like hundreds and fifties.

Q How much money do you recall him coming in with on those occasions?

A It wasn't much. Maybe $2,000. Sometimes I wouldn't have it. I wouldn't have it sometimes.

Q If you can recall the times he did come in and you could change money for him, what were the amounts he gave to you to ask you to change?

A Maybe $2,000 at the very most.

Q How often, if you recall, did he come into that branch?

A Not too often.

Q What kind of money did you give him?

A Hundreds and fifties. Mostly hundreds.

MR. LAVIN: I have no further questions.

THE COURT: Mr. LaRossa?

MR. LaROSSA: I have no cross.

THE COURT: Mr. Duke.

CROSS-EXAMINATION

BY MR. DUKE:

Q Mrs. Keenan, did any of these transactions occur in 1970?

A I am pretty sure, because he came in a period of maybe about a year.

Q Your best recollection is that it was in 1970?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained.

Q Do you recall any -- do you recall if he gave you any explanations for wanting to change this money?

A No. He was a very pleasant fellow and I had a lot of people come in and ask for large bills because they put it in their safe deposit boxes.

Q Did he tell you that --

A No, he didn't give me any explanation. He was just a very personable fellow and I didn't ask him. I had no reason to.

Q Did I understand you to say that you changed, from the time that you first changed money for him until the last time, it was more than a year?

A Yes.

Q How much more than a year?

A I only recall seeing him two years ago at the branch I was previously at. That was at 57th Street and Madison Avenue.

Q In what year did you last see him?

A I guess in '71.

Q The last half or the first half of '71?

A I would say the last half. Around September or -- No, no. I can't give any date because I don't really remember.

MR. DUKE: Thank you.

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THE COURT: Mrs. Rosner?

MRS. ROSNER: No questions.

THE COURT: Mr. Peluso?

MR. PELUSO: No questions.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No questions.

THE COURT: Thank you very much. You are excused.

(Witness excused.)

MR. LAVIN: James Stanley.

J A M E S S T A N L E Y, called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Mr. Stanley, what is your occupation?

A I am retired.

Q In 1971, what was your occupation?

A I was an elevator man.

Q You weren't a superintendent?

A And also a superintendent.

Q What building?

A 176 East 81st Street, and 1420 Third Avenue.

Q During 1971, in the spring of 1971 to early 1972, did an individual named Barry Lipsky live in that apartment?

A That's right.

Q Has that apartment been empty since he moved out?

A Up to a month ago. It is rented now.

Q What apartment did he live in?

A 2-RS.

Q What number was on the mailbox for that apartment?

A I don't remember whether it was 1-E or 2-E. That is on the end.

MR. LAVIN: I have no further questions.

THE COURT: Mr. LaRossa, any questions?

MR. LaROSSA: No questions.

THE COURT: Mr. Duke, any questions?

CROSS-EXAMINATION

BY MR. DUKE:

Q Mr. Stanley, you don't know this gentleman here with the glasses and the blue suit standing up?

A No.

MR. DUKE: Will the record show that that was Defendant Pacelli, your Honor.

THE COURT: Yes.

Q Mr. Stanley, during 1971, did you get any -- were you asked any questions by anyone --

A Do you mean the detectives?

Q Yes.

A A couple of them.

Q While Mr. Lipsky was living in your building?

A I never was questioned then, no. After he got into trouble.

Q It was not until after Mr. Lipsky was no longer living there that you were asked questions?

A That's right.

MR. DUKE:: Thank you.

THE COURT: Mrs. Rosner?

MRS. ROSNER: No questions.

THE COURT: Mr. Peluso?

MR. PELUSO: No questions.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No questions.

THE COURT: Thank you, Mr. Stanley, you are excused.

(Witness excused.)

THE COURT: Next witness.

MR. LAVIN: Joseph Salvemini.

J O S E P H S A L V E M I N I , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Mr. Salvemini, what is your occupation?

A I am employed by the United States Department of

Justice as a special agent for the Drug Enforcement Administration.

Q How long have you been so employed?

A Approximately five and a half years.

Q You were employed by the Drug Enforcement Administration in 1971, were you not?

A Yes, sir, I was. By the Bureau of Narcotics and Dangerous Drugs.

Q Directing your attention to November 17, 1971, were you on duty at that time?

A Yes, sir.

Q Can you tell us where you were?

A At approximately 3:30 in the afternoon I was at the L & A Sporting Goods store located at 2147 Third Avenue in Manhattan.

Q Who were you with at that time?

A I was with a Bureau informant. At that time I met with an individual identified as Peter Aponte and I negotiated with him for a purchase of approximately an eighth of a kilo of cocaine for eighteen --

MR. LaROSSA: I object to this and move it be stricken.

THE COURT: I will take it subject to connection. The jury will recall what I said to them last week about

being taken subject to connection. If it is connected up in the case, then it becomes part of the evidence for you to consider in the totality of all the evidence.

Q You acted in an undercover capacity at that time?

A Yes, sir.

Q How much were you supposed to pay for that eighth?

A I was supposed to pay $1800.

Q When was the delivery supposed to take place?

A I was told to come back the same time the next day, which would be 3:30 the next day.

Q Did you return that day, November 18?

A Yes, sir, I did.

Q What happened at that time?

A I proceeded towards the rear area of the store. At that time I observed two individuals, one who was subsequently identified as Nicky Lugo and the other was Peter Aponte. I approached Mr. Aponte and he indicated for me to follow him to the rear of the store. Actually there were two rear rooms. Outside the door he handed me a green box, an Avon box of some sort, and I went into one of the rear rooms with him and I opened the box and inside I found a quantity of white powder which was in a clear plastic package wrapped around with aluminum foil. And after I examined the cocaine I paid him $1800.

MR. LaROSSA: Objection, your Honor.

MR. MITCHELL: Objection, your Honor. After he examined something he can't identify it unless he testifies to what he did with it.

THE COURT: In other words, what you want to do is to move to strike something out.

MR. MITCHELL: Yes, the word "cocaine."

THE COURT: Granted.

It would be useful if you got up and handled the matter in dulcet tones.

MR. MITCHELL: I am sorry, your Honor.

A I examined what was a quantity of white crystalline powder which appeared to be cocaine.

MR. LaROSSA: Objection. Move to strike.

THE COURT: Yes, we will strike out the statement of what it was. Qualify the agent before you let him testify as to the nature of the item. Qualify him, if he is qualified.

Q How long have you been in the Drug Enforcement Administration?

A Approximately five and a half years.

Q Have you acted under cover on occasions during that period of time?

A Literally hundreds of times.

Q Have you purchased cocaine?

A Many, many times.

Q Have you field-tested a substance that you purchased as cocaine?

A Many times.

Q Have you seen chemist reports of those purchases that you purchased as cocaine after they had been sent to a laboratory?

A Yes, sir, I have.

Q And were those reports --

MR. MITCHELL: Objection, your Honor.

THE COURT: Sustained.

Do you know cocaine when you see it?

THE WITNESS: Yes, sir.

THE COURT: How?

THE WITNESS: It is a white crystalline powder. You rub some of it into your skin. With a little moisture you get a cold stinging feeling on your skin. I have tested cocaine in this manner. All the chemical analyses have always proved to be correct.

THE COURT: Now, go back to your question.

Q Can you tell us what happened when you went in the back of the store on November 18?

A Yes, sir. As I stated, I began thoroughly to

examine the package. I paid Mr. Aponte $1800 in government funds.

At one point an individual that I identified later as Nicholas Lugo entered the room briefly, looked at me and left.

Another individual that I subsequently identified as Abbe Perez, alias Albert Rodriguez, entered the room, looked at me, and left.

A minute of so later Mr. Lugo re-entered the room. At that point I said to Mr. Aponte something about a large number of people that kept coming in and out in the middle of a narcotics transaction. At that point Nicholas Lugo turned to me --

MR. DUKE: Objection, your Honor.

THE COURT: The testimony is taken, again, subject to connection to any aspect of this case. If connected up, it may be allowed. If not, you will be given instructions to strike it from your attention.

Q May I ask you just to go a little slower, please.

A Okay.

Q Can you tell us what happened, what else happened?

THE COURT: Just read back to him as far as he went and let him finish his answer when he was interrupted.

(Record read.)

A And he said to me, I hope you are not who I thought you were when you first came in here, because if you are, you are in a lot of trouble. I said to him to relax, everything was cool, and we shook hands and he left the room.

I then had another conversation with Mr. Aponte relative to my being able to come there and purchase large quantities of heroin and he said he would have to check with the other guy, indicating Nicholas Lugo.

At that point I left the inner area of the store, in other words, the back room, and went into the store proper.

Q Did you return to that store on another occasion?

A Yes, sir. That day I took the evidence to the Bureau headquarters in 90 Church Street. I field-tested it in the presence of my supervisor and received a positive reaction for cocaine. The evidence was then turned over to the chemist.

At a later date I returned to the store.

Q Do you know what date that was, was that November 29?

A Yes, sir, I believe it was November 29.

Q What happened on that occasion?

A It was in the evening, as I recall, and I had a conversation, initially I was admitted to the store by Mr. Aponte. I had a conversation --

MR. LaROSSA: Objection.

THE COURT: This is taken subject to connection. Go ahead.

A He told me that Nicky, Mr. Lugo, was very upset about the fact that I had been the purchaser of the cocaine, he thought the cocaine was going to be purchased by the informant. He said he almost stopped it and he said it was wrong for me to come to the store and purchase narcotics like that without ever having done business with them before.

At one point in the conversation Nicky Lugo came over and said to Mr. Aponte, forget it, the damage is done. If he is a cop,, it's all over.

I started having a conversation with Mr. Lugo and I assured him I was not a cop. And at that time he told me I had to keep things cool in the store because they dealt in a lot of narcotics in the store and kept guns in the basement.

There was further conversation with --

MR. LaROSSA: I object and move the last answer be stricken.

THE COURT: We will ask the jury to disregard anything with reference to any item other than narcotics and what was otherwise kept. That has no part in this case and just erase it from your minds completely.

Go ahead.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

A After some conversation I promised to Mr. Lugo I would keep things cool and he assured me I could come to the store and purchase narcotics at any time. We also agreed I would purchase a quarter kilo of cocaine at a later date for $3500.

Q Did you subsequently have occasion to arrest Mr. Lugo?

A Yes, sir.

Q When was that?

A I believe it was January 17 of '72. It was sometime in 1972. In the wintertime. Early in the year.

Q Where did that arrest take place?

A Manhattan toll booths of the Triboro Bridge.

Q Who was present with you at that time?

A Abbe Perez. Another defendant was with Mr. Lugo.

Q Were they arrested for that sale which took place on November 18, 1971?

MR. LaROSSA: Objection.

THE COURT: Sustained.

What was the charge on which they were arrested?

THE WITNESS: I had an arrest warrant from this Southern District Court House charging Mr. Lugo with sale of cocaine.

THE COURT: What about Perez?

THE WITNESS: He was not arrested until the following day, until a conference at the United States Attorney's office. He was released that night and subsequently rearrested.

THE COURT: Was there any connection between that arrest and anything that you have related in your testimony thus far?

MR. LaROSSA: Objection on the grounds it has no relevancy to this. May it please the Court --

THE COURT: All right, I will respect that objection.

Sustained.

Q Will you tell us what you did with Mr. Lugo after you arrested him?

A He was fingerprinted, photographed and taken to the marshals in West Street.

MR. LaROSSA: I object and move that be stricken.

THE COURT: No. We will take that subject to connection as part of the transaction.

MR. LAVIN: May this plastic bag be marked Government Exhibit 10, please.

(Government Exhibit 10 marked for identification.)

MR. LAVIN: Your Honor, may the record reflect I am cutting open Government Exhibit 10.

THE COURT: Mr. Lavin, if you are saying something

for the benefit of the jury, it would be useful if you turned around and told them what you are saying and told them something in understandable English so all of us may know what is happening here.

MR. LAVIN: May the record reflect I am cutting open Government Exhibit 10, which is a plastic lock-sealed envelope, and removing the contents.

MR. MITCHELL: Is it 10 for identification?

THE COURT: Yes.

MR. LAVIN: Inside are four lock-sealed envelopes which have been opened previously. May I have these marked 10-A, B, C and D, please.

(Government Exhibits 10-A,B,C and D marked for identification.)

MR. LAVIN: May I have this box marked Government Exhibit 10-E and the contents marked 10-F.

(Government Exhibits 10-E, F and G marked for identification.)

Q I am showing you Government Exhibit 10-A for identification. Can you tell us what that is, please?

A Yes, sir. This is the original evidence envelope into which I placed the narcotic drugs I purchased on the date in question. It's got my initials.

MR. LaROSSA: Objection. Move to strike.

THE COURT: Taken subject to connection.

Q What date was that?

A November 18, 1971.

Q I show you Government Exhibit 10-E for identification. Can you tell us what that is?

A This is the green Avon box that the narcotics was contained in.

Q How can you identify it?

A It has my initials and date.

Q What date?

A The 18th of November 1971.

Q And Government Exhibit 10-F for identification?

A This appears to be the narcotics I purchased on the date. It is packaged the same way. I have identified my initials several times before. However, today I don't see them on the plastic.

Q Government Exhibit 10-C?

A This is the aluminum foil wrapper that was wrapped around the outer part of the plastic bag and placed in the box.

Q Was Government Exhibit 10-F for identification in the box?

A Yes, sir, but the aluminum foil was around it.

Q And is that the -- was this placed back into

the box?

A Yes, sir. I gave the chemist everything. In other words, I put the packaged material in with the evidence.

Q Into Government Exhibit 10-A for identification?

A Yes.

MR. LAVIN: At this time the Government would offer 10-F, E and G for identification into evidence.

MRS. ROSNER: May we see the exhibits, your Honor?

THE COURT: Yes. The offer, if it is to be considered at all, would only be considered subject to connection, and you can refer to it that way.

MR. LAVIN: May I have another question, your Honor?

Q Government Exhibit 10-G, are your initials on that?

A Yes, sir, I have an evidence sticker which is attached to Exhibit 10-G.

MR. DUKE: Your Honor, I object on relevancy grounds.

THE COURT: Is there any other objection on the part of anybody else?

MR. LaROSSA: I object, your Honor.

THE COURT: Anybody else?

MRS. ROSNER: I will join Mr. LaRossa's objection. I just assumed it covered everyone's objection.

THE COURT: The exhibits are received subject to connection.

(Government Exhibits 10-E, F and G received in evidence.)

MR. LAVIN: I have no further questions.

THE COURT: Mr. LaRossa?

MR. LaROSSA: I have no questions.

THE COURT: Mr. Duke?

CROSS-EXAMINATION

BY MR. DUKE:

Q Mr. Salvemini, do you know an individual by the name of Barry Lipsky?

A Yes, sir, I do.

Q Was he present at the sporting goods store at the time that you described these various incidents?

A Not that I can recall, sir.

Q Have you had occasion subsequent to November 1971 to discuss this transaction with Mr. Lipsky?

A No, sir, I never discussed it with Mr. Lipsky.

Q Have you discussed it with Mr. Feffer?

A Yes, sir, I have.

Q When was that?

A I couldn't give you an exact date on that, sir, or even an approximation. I have discussed it.

Q Could you place it in 1971 or 1972?

A It would definitely have to be 1972, sir.

Q Would it be -- could you place it in the first quarter of 1972?

A No, sir, I couldn't say.

Q The first half?

A I don't know, sir.

Q Did you file a report concerning this incident that you have testified about?

A Oh, yes, sir.

Q Do you recall the approximate date of that report?

A No, sir. I have to look at the report.

Q I show you Exhibit No. 3545. Is that a copy of your report?

A Yes, sir, it is. This is the first -- Yes, sir.

Q Does that refresh your recollection as to the date that you filed the report?

A Yes, sir. One is dated November 18. One is dated November 19. In other words, I wrote the reports one day after each of the occurrences.

THE COURT: What year?

THE WITNESS: 1971.

THE COURT: 1971?

THE WITNESS: Yes, sir.

MR. DUKE: Thank you.

THE COURT: Any questions, Mrs. Rosner?

MRS. ROSNER: No, your Honor.

THE COURT: Mr. Peluso?

MR. PELUSO: No.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No, your Honor.

REDIRECT EXAMINATION

BY MR. LAVIN:

Q When did you first meet Mr. Lipsky?

A I don't recall, sir. Probably in '72.

Q Was he in custody at that time?

A Yes, sir.

MR. LAVIN: I have no further questions.

THE COURT: All right. Thank you. Step down.

(Witness excused.)

THE COURT: Next witness.

MR. LAVIN: Samuel Bertolino.

S A M U E L B E R T O L I N O , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Mr. Bertolino, what is your occupation?

A Bail bondsman.

Q Where is your office located?

A 81 Baxter Street.

Q Were you a bail bondsman in January 1972?

A I was.

Q Where was your office at that time?

A 77 Baxter Street.

Q Do you know an individual named Vincent Pacelli,Jr.?

A I do.

Q Do you see him in the courtroom?

A I do.

MR. LAVIN: May the record reflect the witness identified the defendant Vincent Pacelli, Jr.

Q Directing your attention to January 20, 1972, did you have occasion to meet Mr. Vincent Pacelli --

A I did.

Q Who was he with?

MR. DUKE: I object on relevancy grounds.

THE COURT: I can't tell. I will allow it subject to any application that may be appropriate.

Q Who was he with at the time?

A He had Cheryl Lugo in my office.

Q Do you recall having a conversation with Mr. Pacelli at that time?

A He asked me, he told me that her husband was in

trouble, if I could help him out.

MR. LaROSSA: I object to this.

THE COURT: Take it subject to connection.

Q You were speaking to him in your office as a bail bondsman, were you not?

A Yes, sir.

MR. LAVIN: I have no further questions.

THE COURT: Any questions?

MR. LaROSSA: I move to strike the testimony.

THE COURT: No, the motion is denied. The testimony will stand subject to connection in lieu of the naming of the individual on the last page of the bill of particulars.

MR. LaROSSA: I have no questions.

THE COURT: Mr. Duke?

CROSS-EXAMINATION

BY MR. DUKE:

Q Mr. Bertolino, did Mr. Pacelli tell you what Mr. Lugo was in trouble for?

A No, sir.

Q Did you subsequently write a bail bond for Mr. Lugo?

A I didn't write the bail bond that day. It was written two days later.

Q But did you write it?

A Al Newman wrote it and I assumed half the liability with him.

Q Was any security obtained for the bail bond?

A Was there any security?

Q Yes.

A Yes, there was.

Q Who provided that security?

A Cheryl Lugo.

Q Was there a premium paid for the bond?

A Yes, sir.

Q Who paid the premium?

A Cheryl Lugo, as far as I know.

Q Is there anything uncommon about a friend of the family of an arrestee coming down and bringing the family member down and introducing him or her to you?

MR. LAVIN: Objection.

THE COURT: Overruled.

A No, sir.

Q Is there anything sinister about what happened on January 20 in your office?

MR. LAVIN: Objection.

THE COURT: Sustained.

MR. DUKE: No further questions.

THE COURT: Mrs. Rosner?

MRS. ROSNER: No questions.

THE COURT: Mr. Peluso?

MR. PELUSO: No questions.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No questions, your Honor. However, I move to strike as to Defendant Barrett.

THE COURT: Same ruling as to the previous motion.

REDIRECT EXAMINATION

BY MR. LAVIN:

Q You have no knowledge whether Mr. Pacelli gave Mrs. Lugo any money for that bail bond, do you?

MRS. ROSNER: I object to that.

THE COURT: The form of the question is objectionable.

Do you know anything at all about the source of the money?

THE WITNESS: No, sir.

THE COURT: All right, step down.

(Witness excused.)

MR. LAVIN: Helma Bretton.

H E L M A B R E T T O N , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Mrs. Bretton, what is your occupation?

A I'm the head teller in the Williamsburgh Savings Bank.

Q Were you employed at that bank in 1971?

A Yes, sir.

Q Do you recall shortly before Christmas 1971 selling some savings bonds --

A Yes.

Q -- to an individual?

A Yes.

Q I will show you a picture from Government Exhibit 7 in evidence, No. 178. Can you identify that person standing up? Do you know who it is; have you ever seen him before?

A Yes. This man bought some bonds in my window.

THE COURT: Will you read that, Mr. Reporter?

(Record read.)

THE COURT: What was the exhibit number?

MR. LAVIN: Government Exhibit No. 7. The picture was 178.

May the record reflect it is a person she referred to, a picture identified as Barry Lipsky.

Q I show you Government Exhibit No. 5 for identification, Mrs. Bretton. Can you identify those objects for us?

A Yes. These are our savings bond application and it has my handwriting on it.

Q Do you know what those stubs underneath are?

A That's a copy of the actual bond.

Q Are these records made in the normal course of the business of the bank?

A Yes, sir.

Q Are they kept in the normal course of business?

A Yes.

MR. LAVIN: The Government introduces Government Exhibit 5 at this time.

May I ask one other questi n?

Q Are these prepared at or about the time that the transaction took place?

A Most of the time at the window. We give the customer the application which is blank. He fills it in and then in this case I wrote in the amount.

MR. LAVIN: The Government offers Government Exhibit No. 5 in evidence.

MR. LaROSSA: I object on behalf of my client, your Honor, without stating the ground unless your Honor wishes.

THE COURT: The document is received subject to connection.

MR. LaROSSA: May I write something out, please?

THE COURT: Yes.

MRS. ROSNER: Your Honor, there is a portion of this exhibit which I think, if the Court examines it, should be removed.

THE COURT: Show it to Mr. Lavin. Maybe he will agree to it.

Is that cleared up?

MRS. ROSNER: Yes, thank you, Judge.

MR. LAVIN: The Government offers Government Exhibit No. 5 in evidence.

THE COURT: Any further questions?

MR. LAVIN: Yes.

THE COURT: Received, subject to connection.

Wait a minute. Mr. LaRossa is writing something. Just hand it across the table.

All right, your objection is noted and marked Court's Exhibit 10.

I may add that that's not the only purpose for the evidence or the only inference that could be drawn from the evidence.

(Government Exhibit 5 received in evidence.)

(Court Exhibit 10 marked.)

Q Mrs. Bretton, let me show you Government Exhibit 5 --

THE COURT: When I say "the only inference," that your inference is not the only inference to draw from the evidence but there is an inference which would permit it to be within the --

MR. LaROSSA: I understand that. Then I would ask for a limiting instruction with respect to my client.

THE COURT: The jury is instructed that the savings bond application, concerning which matter Barry Lipsky testified, that in substance -- and it is your recollection of the evidence and not mine that counts-- but my recollection is that in substance he was directed by Mr. Pacelli to get a couple of bonds for Mr. Sperling's children in some name. This matter, if connected up to the conspiracy charge ultimately and allowed to stand in it, would relate to the defendant Pacelli and not to any of the other defendants since it was not a matter affecting any of the other defendants.

Is that what you had in mind?

MR. LaROSSA: Thank you, your Honor.

Q Mrs. Bretton, you have already heard the name, but do you recall who Mr. Lipsky told you he wanted to buy the bonds for?

MRS. ROSNER: Objection to the form of the question, your Honor.

THE COURT: What is your recollection of the transaction? Start from the beginning, tell it to us as best you can in sequence.

MR. DUKE: Your Honor, I object to the hearsay.

THE COURT: That objection is overruled because the information is being taken subject to connection.

What happened? This man came to your counter?

THE WITNESS: Yes.

THE COURT: And you said that he filled out certain applications?

THE WITNESS: Right.

THE COURT: And those applications were for the purchase of the baby bond?

THE WITNESS: I didn't mean they were for babies.

THE COURT: I don't mean babies. I am talking about U.S. Government bonds.

What was the line that you wanted to inquire about?

MR. LAVIN: I wanted to know if Mrs. Bretton could testify as to who the bonds were for.

THE COURT: What name did he give you? Name or names?

THE WITNESS: The name on the bonds were for Gus and Nick Sperling, and to me, being German-born, Sperling means "little sparrow." That's why I giggled and it stuck

in my mind, the name Sperling. He said, why are you giggling? I said, because of the name, Sperling means sparrow. Who are they for?

He said, they are for my boss' children.

I said, he must be a good boss if you buy his children bonds for Christmas.

That's how I remember the episode.

THE COURT: Anything else?

MR. LAVIN: No.

THE COURT: Any questions, Mr. LaRossa?

MR. LaROSSA: No questions.

THE COURT: Mr. Duke?

MR. DUKE: No questions.

THE COURT: Mrs. Rosner?

MRS. ROSNER: No questions.

THE COURT: Mr. Peluso?

MR. PELUSO: No questions.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No questions.

THE COURT: Thank you very much. You are excused.

(Witness excused.)

THE COURT: Now, ladies and gentlemen, I think we will take a short recess.

(Recess.)

MR. LAVIN: Your Honor, at this time I would like to read into the record some stipulations.

THE COURT: Ladies and gentlemen, when a lawyer for one or the other side reads stipulations, the purpose is to tell you what everybody has agreed to so as to save the time of producing witnesses for this purpose. These are agreed statements and that's what a stipulation is that is going to be read now.

MR. LaROSSA: May the record note that I object to the introduction of the evidence, notwithstanding the stipulation.

THE COURT: Subject to connection.

MR. LAVIN: It is stipulated and agreed between the Government and all defense counsel that if called as a witness, Jack Fasanello would testify as follows:

That he is employed by the Drug Enforcement Administration as a forensic chemist and is fully qualified to analyze material believed to contain controlled substances.

That he received Government Exhibit 10-A in a lock-sealed envelope, in a locked and sealed condition, and he opened it on November 19, 1971 and analyzed the contents, which was Government Exhibit 10-F, which was contained in a green box, Government Exhibit 10-A and tinfoil, Government Exhibit 10-G.

Government Exhibit 10-F had a net weight of 121.47 grams of 43.9 percent cocaine.

Following this analysis, he sealed Government Exhibits 10-F, G and E into another lock-sealed envelope, Government Exhibit 10-D, and that thereafter that envelope, 10-D, was opened and 10-E, F and G were placed into 10-C and 10-B on other occasions, and that finally it was placed in Government Exhibit 10 for identification.

Mr. Fasanello would further testify that on March 29, 1973, he went in the company of agents to Apartment 2-RS also called Apartment 1-A at 1420 Third Avenue, New York City, and using a vacuum cleaner, he collected samples as follows:

May the record reflect I am opening Government Exhibit 11 and removing the contents, three jars. May I have this jar marked Government Exhibit 11-A.

(Government Exhibit 11-A marked for identification.)

MR. LAVIN: Government Exhibit 11-B.

(Government Exhibit 11-B marked for identification.)

MR. LAVIN: Government Exhibit 11-C.

(Government Exhibit 11-C marked for identification.)

MR. LAVIN: Government Exhibit 11-A contains traces of white powder collected from a plastic utility tray in a kitchen cabinet.

Government Exhibit 11-B contains dust and traces

lzgs

of white powder collected from the grease tray on the stove.

Government Exhibit 11-C contains traces of white powder collected from the burner area of the stove.

May the record reflect I am cutting open Government Exhibit 11-D.

I am cutting open Government Exhibit 11-E. May I have that marked as 11-E, that plastic bag.

(Government Exhibits 11-D and 11-E marked for identification.)

THE COURT: Has 11-E been removed from 11-D?

MR. LAVIN: That's right.

THE COURT: You didn't say that.

MR. LAVIN: May the record reflect I am opening Government Exhibit 11-E for identification and removing the contents, two plastic bags, and request that they be marked Government Exhibit 11-F and G.

(Government Exhibits 11-F and 11-G marked for identification.)

MR. LAVIN: Government Exhibit 11-F for identification contains vacuum sweepings of the perimeter of the living room rug.

Government Exhibit 11-G for identification contains a small piece of foil found under the refrigerator.

And that thereafter Mr. Fasanello conducted tests

between the dates March 30, 1973 to April 11, 1973, and the results of his analyses were as follows:

Government Exhibit 11-A was found to contain heroin hydrochloride and sugar and traces of cocaine were also indicated.

Government Exhibit 11-B, no controlled substances detected.

Government Exhibit 11-C was found to contain heroin, traces of cocaine indicated.

THE COURT: Did you say 11-A had heroin, sugar and cocaine?

MR. LAVIN: Yes, your Honor.

Government Exhibit 11-F was found to contain cocaine and traces of heroin.

Government Exhibit 11-G, no controlled substances.

The balance of samples taken, Government Exhibit 11-A1, 2, 3 and 4, were found to contain no controlled substances.

Your Honor, at this time the Government would offer into evidence Government Exhibits 11-A for identification, 11-C for identification, and 11-F for identification.

THE COURT: They are received under the stipulation; subject to connection, however.

(Government Exhibits 11-A, 11-C and 11-F received

lzgs

in evidence.)

MR. LAVIN: It is further stipulated between the Government and counsel for all defendants that if called to testify, Lawrence Cohen would testify as follows:

That he is the manager of 86th Street Locksmiths, Inc., located at 357 East 86th Street, and that as such he is custodian of the records of that business and that Government Exhibit 12 is a record of 86th Street Locksmiths made and kept in the normal course of business and it was the normal course of business to make and keep these records.

The Government offers Exhibit 12 for identification into evidence.

MR. LaROSSA: Same objection, may it please the Court.

THE COURT: Same ruling. It is received in evidence subject to connection under the stipulation.

(Government Exhibit 12 received in evidence.)

THE COURT: Now, so the jury will know what we are talking about, what is contained on Exhibit 12?

MR. LAVIN: This is a bill, 86th Street Locksmiths, Inc. The name "Mr. Stella." It is dated April 26, 1971. There is an address 1420 Third Avenue and the handwriting indicates "installed metal sheet steel on door. Tax," and there is a $90 total bill for that and some other writings.

"One cylinder lock."

MR. NESLAND: Your Honor, before calling the next witness, the Government would read stipulations concerning Government Exhibit 13 for identification through Government Exhibit 21 for identification, pre-marked, and they have also been shown to all defense counsel.

It is stipulated and agreed between the Government and counsel for all defendants that if called as a witness Roger Auerbacher would testify as follows:

That he is the manager of the Bar Harbor Motel in Massapequa Park, New York, and as such he is custodian of the records of the motel and that Government Exhibit 14 for identification, Government Exhibit 16 for identification, and Government Exhibit 19 and 21 for identification are guest registration cards from the motel and are records made and kept in the regular course of business and that it is a regular course of business of the Bar Harbor Motel to make and keep these records. And that the entries were made at or about the time of the transactions reflected therein.

It is further stipulated and agreed between the Government and counsel for all defendants that if called as a witness Roger Santora would testify that he is the manager of the Skyline Motor Inn, 49th to 50th Streets on Tenth Avenue, New York, New York and as such he is the custodian

of the records and that Government Exhibit 13 for identification and Government Exhibit 18 for identification are guest registration cards and bills for the motor inn and are records made and kept in the regular course of business and that it was the regular course of the business of the motor inn to keep such records and that the entries were made at or about the time of the transactions reflected therein.

And it is further stipulated and agreed between the Government and counsel for all defendants that if called as a witness, Charles Mayer would testify that he is the custodian of the records of the Gateway Motel, Sunrise Highway in Merrick, Long Island, and that Government Exhibits 15 for identification, 17 for identification and 20 for identification are guest registration cards of the Gateway Motel and that they are records made and kept in the regular course of business and it is the regular course of the business of the motel to keep such records and that the entries were made at or about the time of the transactions reflected therein.

At this time the Government offers Government Exhibits 13 for identification through Government Exhibit 21 for identification into evidence.

MR. LaROSSA: Same objection.

THE COURT: Same ruling. They are received in evidence subject to connection.

(Government Exhibits 13 through 21 received in evidence.)

THE COURT: Call the jury's attention to the contents of the documents so they know what has been received subject to connection.

MR. NESLAND: Government Exhibit 13 for identification is a registration card for the Skyline Motor Inn in the name of Norman Goldstein. It reflects a date of December 10, 1972.

Government Exhibit 14 is a guest registration card from the Bar Harbor Motel in the name of Joseph Conforti, and it is dated March 8, 1972.

Government Exhibit 15 is a guest registration card from the Gateway Motel in the name of Joseph Conforti. The date is June 10, 1972.

Government Exhibit 16 for identification is a guest registration card from the Bar Harbor Motel in the name of Joseph Conforti dated September 10, 1972.

Government Exhibit 17 are guest registration cards from the Gateway Motel in the names of Joseph Conforti for the date September 16, September 17, September 19, September 21, September 24, 1972.

Government Exhibit 18 is a guest registration card from the Skyline Motor Inn in the name of Joseph Conforti.

The date of which is January 10, 1973.

Government Exhibit 19 is a guest registration card from the Bar Harbor Motel in the name of Joseph Conforti. The date, April 7, 1973.

Government Exhibit 20 is a guest registration card for the Gateway Motel in the name of Joseph Conforti for the date April 11, 1973.

Government Exhibit 21 is a guest registration card for the Bar Harbor Motel in the name of Joseph Conforti. The date is April 13, 1973.

At this time the Government calls Joseph Conforti.

(Continued on following page.)

MR. MITCHELL: If your Honor pleases, may we exclude any agents that are in the courtroom at this time?

THE COURT: If there are any agents who are to testify, they may be excluded.

J O S E P H C O N F O R T I, called by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NESLAND:

Q Please speak up, Mr. Conforti, so everybody back here can hear you.

Are you the same Joseph Conforti named in this indictment as a co-conspirator?

A Yes, sir.

Q In June of this year did you plead guilty to a crime?

A Yes.

Q Was that crime a conspiracy to violate the narcotics law?

A Yes, sir.

Q Do you have an understanding with the government with respect to that?

A Yes, sir.

Q Please tell the jury what it is, please.

A I am under protective custody.

MR. LA ROSSA: Objection. Move to strike.

THE COURT: Strike that out. That is not of any significance to the present trial. I think -- did you have --

MR. NESLAND: I had something else in mind, your Honor.

THE COURT: Is there any understanding that you have with the government in respect of the charges?

THE WITNESS: They will be recognized by the Court for what I am doing.

Q I would like to direct your attention, Mr. Conforti, to the year 1971. Where were you living at that time?

A At 3212 Giegerich Place in the Bronx.

Q Speak up a little, Mr. Conforti.

What was your occupation in 1971?

A I was owner of a gas station.

Q Where was that gas station located, Mr. Vonforti?

A 1128 East Gun Hill Road.

Q Did you know a man by the name of Louis Mileto?

A Yes.

Q How long have you known Mr. Mileto?

A Close to nine years.

Q Did there come a time in 1971 that you had a conver-

sation with Mr. Mileto concerning some packages?

A Yes.

Q Do you recall when you had that conversation?

A The end of June, the beginning of July.

Q Would you please tell the Court and jury the circumstances of that conversation with Mr. Mileto?

MR. LA ROSSA: Objection.

THE COURT: It will be received subject to connection, if any.

Q Proceed.

A When he came to the station, he asked me to keep some boxes, some suitcases in the back stockroom. He told me he was in the numbers racket and he just wanted to keep the stuff in the back stockroom.

Q What did you say to him?

A I agreed to it.

Q Did he put them back there?

A Yes, sir.

Q After he put the boxes in your gas station, did there come a time that you learned what was in those boxes?

A Yes, sir.

Q Will you please describe the circumstances of that?

A I had a reorder of stock and I went back in the

stockroom to fix up the stockroom. I picked up one of the suitcases. There was some noise when I picked it up so I opened it up and there was some scales and screens and so forth. Then I decided to open one of the boxes that was sealed and I opened it up. It was a white powder, about 50 pounds, it was a heavy box. It was in a large plastic bag so I folded it, put it back and I waited until Louis came back.

Q Did you have a conversation with him at that time?

A It was about a day or so after, he comes to the station, comes in the office. Sits down. I asked him, what is that white powder in the stockroom?

He couldn't answer me so he just came out and said, That's manitta and milk sugar for cutting and diluting heroin. I'm in the junk business."

Q Did he tell you who he was in the business with?

A Yes.

MR. LA ROSSA: Objection to the form of the question.

THE COURT: Overruled.

MR. LA ROSSA: I would object on the further ground it is narrative hearsay and not in furtherance of the conspiracy.

THE COURT: Overruled.

Q Did you have a conversation about his business?

A Yes.

Q What did he say?

A He said he is working for Herbert Sperling.

Q Did there come a time after that that you took a trip with Mr. Mileto?

A Yes.

Q Where did you go on that occasion?

A To Philadelphia.

Q Please describe the circumstances of that trip?

A He comes up to the station early one morning, asked me if I was busy. I told him no. He had to rent a car then so he asked me if I could take a drive with him out of town, he had to see somebody, it was very important. So I decided to go with him. I drove to philadelphia. On the way there I get stopped for speeding and the officer -- I get out of the car and I show my identification to the officer. And he says he wanted to see the papers for the car. So I went back to return to the car. Louis already had the papers out in the window. He was all nervous. He said, "Everything is all right, Joe."

So I took the papers and showed it to the officer. So the officer turned back and looked into the car. Everything checked out all right and the officer gave me a

warning citation and told me if I get caught speeding again, that the next officer will know because it is on the teletype or something to that effect.

I get back into the car, Louis is all nervous, dry in the mouth. I knew something was wrong.

MR.MITCHELL: Objection.

THE COURT: Strike that out.

Q Did you have a conversation with him at that time?

A Yes, sir. I knew there was something wrong.

MR. LA ROSSA: Objection.

THE COURT: Leave that part out. That is stricken out. The jury will ignore it.

Just tell us what happened and let the jury decide in its own mind as to what value to give to your testimony.

Q What did he say to you and what did you say to him, if anything?

A I told him, I says, "Louis, you don't have no pistol on you," because normally a pistol always goes in the bottom of the seat or in the trunk because it was a rented car so if he got stopped, it would belongto the next person --

MR. LA ROSSA: Move to strike.

THE COURT: Strike out everything but the conver-

sation.

A I asked him what was wrong. Something is wrong. There was something wrong. I didn't feel comfortable. So he goes into the back -- leans over in the back seat, he says I got a kilo of heroin. He had a jacket with a sealed pocket inside, so he shows me the heroin. So he puts it back. I explained to him, "Why didn't you tell me that in the beginning?"

He said, "The less you know, the better it is, so you won't get nervous in case something did happen."

So I continued to drive to Philadelphia. Got off at the Camden exit, an Italian section with people doing a lot of shopping.

I park the car. He tells me, "I will be right back, just watch the car."

And everything was going to be all right. So he disappears in the crowd and I waited for him. He shows up about 20 minutes later with a shoe box with silver wrapping paper on it, green, blue, silver striper on it. He tells me I picked up some money. He tells me I picked up $60,000.

He takes it out and he shows me the bundle lots, hundreds, fifties, tens, fives.

I said, "Who is that going to, Herbie? "

He said no. He said it's going to Bennie, one of his partners. He put the money back, put the wrapping paper back and put it on the seat. After that it was a rush deal, he had to get back into the city by a certain time.

Q Was that the extent of the conversation you had while you were in the car to Philadelphia?

A No, sir.

Q What else was said?

A I asked who was Bennie. Louis explained to me that Bennie was his partner for money.

MR. LA ROSSA: I object to this portion.

THE COURT: Just state the substance of the conversation as best you recall it. You asked a question and what answer did you get?

A I wanted to find out who was Bennie. And he explained to me, Bennie was Herbie's partner, his backup man for money problems if you needed money in the junk business, Bennie was there to give him money. And this money was to be delivered to Bennie.

So after that -- it was a rush deal, he had to get back to the city.

I get to the station about twenty to two, around that time, he gets behind the office and calls Herbie. Gets

finished with that conversation and tells me he got to pick up more money on 125th Street on the West Side. And that the money wasn't enough. So when he spoke to Herbie he says, the deal came through and he picked up 60 lots.

Q What do you mean by lots? What does the term lots mean, if you know?

A That is to tell Herbie he picked up 60,000.

Q What happened after that?

A I went in the backroom and he explained that he had to go pick up more money at 125th Street, he wanted me to cash the small bills, fives and tens, into the largest denominations I could get. So he left me close to 6,000 and he was going to 125th Street and I remained going to different banks getting large bills, cashing the fives and tens in.

Q What kind of bills did you get?

A Fifties and hundreds. I came back up to the station, it could have been around a quarter after three because the banks close at 3 o'clock. He tells me we have to take a ride to Bellmore and he has to pick up a car. So I leave my sation with him, get to Bellmore and get to his home. He was telling me this is going to be where he is going to live, he is going to rent out the home. He had a silver gray Eldorado that was parked in front of it. Takes the

money from the seat, puts the money in the trunk of the other car and tells me we have to go back to the station. We drive back to the station. He tells me that I am going to take a drive down to Spring Street at Herbie's home.

Q How did you go down to Spring Street?

A I left the rented car at the station and I drive the Eldorado with Louis to Spring Street and the money was right between us.

We get down to Spring Street, he parks the car half on the sidewalk, half on the street because it is a narrow street. He tells me "Joey, keep an eye on the car, I will be right down."

He went up to Herbie's house. 15, 20 minutes later I see a guy walk out with money, the same wrapping paper. I sat in the car. Five minutes later Louis comes down, gets in the car.

I asked him who is that guy carrying the money because I noticed the box. He says that he is Ben Mallah.

Q Do you see the man that you saw on that occasion in the courtroom today?

A Yes.

Q Will you please point him out for the Court and jury?

A The gentleman with the mustache and glasses and bald

head. Striped tie on.

MR. NESLAND: May the record reflect that Mr. Conforti accurately identified Benjamin Mallah, the defendant.

Q What happened after that, Mr. Conforti?

A Louis told me they had to meet a customer up in Harlem and for me to drive. I drove on First Avenue in the high 90's. He tells me to take a cab and go home. I park the car, get out, he takes over the wheel, I take a cab and go home.

Q During the time that the packages were in your station, did Mr. Mileto visit your station?

A Yes.

Q How often?

A Three times a week.

Q Could you describe what he did on the occasions that he came to the gas station?

A He will come up, go back into the stock room, in the back room, open the box, open up the suitcase, put the scale up and take what he needed, take the manitta, put it in a brown paper bag, fold it, clean up the area and then he would leave. I always go back in the stockroom to clean up the powder that was on the floor.

Q Did there come a time in 1971 when you considered

selling your gas station?

A Yes, sir.

Q When was that?

A It was the beginning of August.

Q Did you have a discussion with Lou Mileto about selling your gas station?

A Yes.

Q What did you say to him, what did he say to you?

MR. LA ROSSA: Objection.

THE COURT: Sustained.

Q Did there come a time , Mr. Conforti, that you discussed the packages in the station with Mr. Mileto?

A Yes.

Q What did he say to you and what did you say to him?

A I told him the stuff has to get out of the station, that I didn't want it there no more. He didn't like the idea because --

MR. MITCHELL: Objection, your Honor.

THE COURT: Just strike out he didn't like the idea. Just tell us what he said.

A He tells me, "Joe, I just came out of prison and you are the only one I can trust to leave the stuff. I am trying to get on my feet and Herbie is the only one," that he could make a quick buck with and he wanted to make up

time that he lost. I told him the stuff had to get out of the station because I didn't like the idea of him coming and going.

At first he thought I wasn't going to go through with it until I put an ad in the paper and I showed him.

MR. LA ROSSA: Objection, your Honor. Move to strike.

THE COURT: Strike out the last part of it.

Go ahead.

Q Did you tell him you were going to sell your station?

A Yes, sir.

Q Did there come a time that he began moving the packages from your station?

A Yes.

Q Would you describe the circumstances under which he moved the packages?

A It was around the middle of August. He started taking packages slowly out of the station, told me he had an apartment in Queens. He told me the girl he met in Membils, he didn't want to take everything -- he wanted to take the packages one at a time so the girl wouldn't go crazy when she saw the boxes and the suitcases. So he said "Joe, it will take a little time but I am slowly taking it out of the station."

The last time when he came to the station, he had two black trunks with him. He went back in the station, took one box and one suitcase, put it in the trunk and was going to go to the firl's apartment and for me to keep one trunk in my basement and he had four packages that he put into the trunk because I asked him what is in the package. so he said it's only milk sugar, manitta, you can't get in trouble with it because they use it for infants. If the infant gets diarrhea, the stuff binds them, so you can't get in trouble.

Q Did you help him move the packages on that occasion?

A Yes.

Q What did you do with them?

A He explained to me. I put it in the basement --

Q What basement?

A The basement at the home I was living at. He tells me don't open it because the packages were in brown paper bags and were plastic bags and sealed with a heat sealer so if I try to open it, he will know that I opened the bags.

After I put it in the basement we drive to Queens with the other trunk. He explains to me about this girl Selma's apartment and he is going to have a a new stash so

we go up to the apartment and we leave the trunk by a wall in the bedroom.

Q What happened after that?

A I went back to the station.

Q Did there come a time thatyou had a conversation with Mr. Mileto about what to do with those packages?

A Yes, sir.

Q Would you please explain to the Court and jury what you said toMr. Mileto and what he said to you?

A I asked Louis, I says, "What happens to you if you get arrested," being that there was packages in the basement and I knew where theapartment was.

At first he didn't want to answer me and then I kept on him. I said what happened if you get arrested because I am the only one that knows where the apartment is and plus you got stuff at my home.

So there was one time I was over his house with the family and he says Joe, let's take a ride into the city. We take a ride -- we leave Bellmore, go into the city, get to 54th and Seventh Avenue. He sayd, I am going to show you Herb. So he circled the block a few times until he spotted him. Then he pointed him out. He gave me his phone number. So I says, "That don't sound right. You just give me a number and if something happens to you,

I will see this man that you pointed out and give him the stuff that you have?"

So he says, "Joe, I will work on it," and that was it.

The next day --

Q Did you meet Herbert Sperling?

A Yes.

Q When did you meet him?

A Louie calls me up, tells me to take a ride down to 54th and Seventh Avenue. He is standing on the corner when I arrive and he pointed to the parking lot, park your car. I parked the car. He is standing outside. He tells me to go in the barbership, get a haircut. Stay there until I come in. I get a haircut, As soon as I get finished, I see Louis and Herbie talking outside. They walk in, I get introduced to Herb. He tells me -- he says "Herb, this is the kid I was talking about, he can be trusted."

I shook hands with Herb. He said, "Dont worry about nothing, Joe, everything will be all right."

That was it.

Q What was the barbershop you were in on that occasion?

A The Ballantine Barbershop.

Q Did Mr. Mileto call you after that about the packages?

A Shortly after I get a call, about 1, 1:30 in the morning, he tells me to go downstairs and pick up the packages, that he needed it, for me to go on the Belt Parkway and get off at Queens Boulevard and there is anOmaha Diner around the corner.

So I go downstairs, get the packages out of the trunk, I go to the diner and he is standing by the car. So I turn my window down. He said, "Joe, everything all right?"

I said, "Yeah."

I hand him the package and I went home.

Q You went home?

A Yes.

Q Did you have a conversation after that in which Mr. Mileto asked you for another package?

A A couple days after. He calls up, I just got home from work. My wife tells me, Joe, stay home, it's very important, Louis called. I get a call from Louie, he tells me to stay home; that he wanted me to deliver the package. I didn't want to because I made plans to go out with the family. In other words, Louis called, I jumped. And this time I told him no, you come down and pick it up. I am

going to leave.

He said, "Joe, don't move. I will be there."

So I took a shower, got dressed and waited for him. He comes in about an hour, an hour and a half.

He was made because I didn't deliver the package. I walk him halfway down to the basement. He takes the other package,puts it in his coat and he leaves.

Q Did you have another conversation in which Mr. Mileto asked you to deliver a package?

A I come home. My wife tells me. Louis called, for me to stay home. He calls me up and tells me I got to make a delivery, to meet him at the Omaha Diner about 9:30. So by 9 o'clock I go downstairs, I get the third package, I get in the car and I go to the Omaha Diner. I waited in the parking lot. He wasn't there. He shows up about two and a half hours later, pulls up in a car, slams the door. He was mad. You could tell by the way he walked.

I said is something wrong?

He said the damn customer didn't have the money to make the deal and I got to kill some time. So I gave him the package, he put it in his coat.

He said let's take a ride to Selma's apartment.

I got in his car and he drove to the apartment. We parked the car. He gave the man a tip, go up to the

apartment. He tells me I got to kill time. He makes a few phone calls. He calls up Herb. Takes a shower.

Q What happened after that?

A After the calls, he said everything is all right, Joe, the customer had the rest of the money. He asked me if I wanted to take a ride to Brooklyn. I told him no. So we both leave the apartment together, he drives his car behind the diner, I get in my car and I go home.

Q Was there an occasion after that when Louis Mileto called you and asked you to come over to his apartment?

A Yes, sir.

Q What happened on that occasion?

A A weekend, it was on a Saturday. Calls me up about 10 o'clock in the morning. Tells me if I was busy, if I was going anything.

I tell him no. He tells me to come over to the apartment. I leave my house, I take a ride to the apartment.

Q What happened after you arrived at the apartment?

A I arrived at the apartment. I knock on the door. He lets me in. He says Joe, I am going to teach you how to test. And he walks into the kitchen. He has like a big Pyrex jar, poured some mineral oil in it and he didn't have enough mineral oil so he left the apartment, went down to the drugstore, got some more mineral oil, went back

to the apartment and we started testing heroin.

Q Would you please describe how he told you to test it on that occasion?

A He gets a big pyrex jar, fills it up a little more than three-quarters of the way with mineral oil. He gets a cover, a cardboard cover, makes three holes in it. On the right side it is for a test tube, in the middle is for the thermometer and on the other side another test tube goes in. Takes twopackages from his pocket, rips it open, pours it into the test tube. He had another package, puts it in the other test tube and explains to me that don't put too much mineral oil in the pyrex because the mineral oil will stick and when it gets hot it thins out so it rises. He explains to me that when you test heroin, when the thermometer gets in the 190, for you to keep an eye on the heroin and the thermometer at the same time. You look at the white of the heroin. When it starts turning brown or starts to break, they call it, take a reading from the thermometer, the exact time that the heroin turns brown. The reading took about 240. He says it is pure heroin. Anything above 300, in tha area, it's phony. Anything below 190 or below 200, it's been cut already.

Q What happened after you finished the tests?

A Take out the thermometer, cleaned it down and put it

back -- it was in a black case, put it back on top of the shelf. Cleans the test tubes out because the test tubes that he had, he bought cigars that come in a glass. He takes the cigar out and uses that as a test tube. He cleaned them out.

At that time he made a couple phone calls, one, he called up Herbie and told him everything is okay. At that time he takes the hot mineral oil, pours it into the sink. The sink was running with hot water, clean out the pyrex and that was it.

Q Did you have a conversation with him about the last package that you had in your house at that time?

A Yes. I was over his house. We had a little argument because I toldhim I wanted the package -- at that time I told him numbers because my wife was sitting there. My wife thought it was numbers, that he was in the bookmaking business. I told him I wanted the last package out.

MR. LA ROSSA: I object and move the last remark be stricken, your Honor.

THE COURT: Strike it out.

Q What did you tell him?

A I told him to take the package out, if he didn't take the package out I would throw it in the sewer.

He said Joe, I need a little time with the last package. It will be a little time.

Q Did there come a time when he called you about that last package?

A Yes.

Q What happened on that occasion?

A He calls me up. It was the following weekend. He tells me Joe, come up with the last package. It was around 11 o'clock. I went to the girl's apartment. I knock on the door. He opened the door and saw who I was and he was on the phone. At the same time the whole apartment was all smoke in it. He was making another test. So he lets me in. He just opened the door a little bit so I let myself in and closed the door behind me.

He is on the phone. He says, I will get in touch with you. He hung up right away. He went in the kitchen. The mineral oil was boiling over. There was smoke because the oil hits the flame and you get a black smoke so we cleaned up the whole mess, cleaned the pyrex jar, the stove, cleaned the walls. He explained to me he has to make another test. So he goes to the trunk, he opens the trunk --

Q What did you observe in the trunk?

A There was about 8 half kilos of pure heroin.

MR. LA ROSSA: I object and move it be stricken.

THE COURT: The motion is denied. It is being taken subject to connection.

Q What else did you see in the trunk?

A A couple of pistols.

MR. LA ROSSA: Object and move it be stricken.

THE COURT: Strike that out. Disregard that. Just keep to the matter that we are interested in. The jury will ignore that last comment.

MR. LA ROSSA: Will your Honor note he said what did he see and not what he said. When I objected to that last, it was what did you see in the trunk.

THE COURT: Is this the trunk that you described before?

THE WITNESS: Yes, your Honor.

Q What else did you see? Did you see any equipment?

MR. MITCHELL: I object to leading, your Honor.

THE COURT: I think in order to avoid any, anything that I wouldn't let into evidence, I think I will allow the leading question at this point.

Did you see any equipment there?

THE WITNESS: Yes, your Honor.

Q What did you see?

THE COURT: Will you hold it just a minute.

Could you give me an estimate of the time that you

will be on direct examination?

MR. NESLAND: Probably past 2 o'clock, your Honor.

THE COURT: All right. When you come to a stopping point, to a topical stopping point, I will want to have a side bar meeting with you and other counsel.

Q What other kinds of equipment did you see in the trunk?

A He had a couple of plastic containers that were mixing material -- manitta milk sugar, had a couple of screens, scoops. All the paraphernalia you need to cut heroin.

Q What happened on that occasion that you were at the apartment?

A Being that the test was no good --

Q Did you retest?

A Yes. So he took one of the half kilos of pure heroin, made a little cut in it and put a little sample from that bag into one test tube. Takes another bag, cuts it, takes a sample from that bag, puts it in the other test tube and we make another test. It tested 240, so it was pure. So he makes a phone call, calls up Herbie, they had a little argument because Herbie didn't like the idea Louis calling --

MR. MITCHELL: Your Honor --

THE COURT: You see, the witness is supposed to tell

just what he saw or heard and leave it to the jury to draw any inferences from that. That's the reason why legally I can't permit that last part. That is stricken out.

MR. MITCHELL: Your Honor, I am going to object to whom he called.

THE COURT: Beg pardon?

MR. MITCHELL: I am going to object to whom he called unless he heard the party speaking.

Q Did he tell you who he called?

A Yes.

THE COURT: What did he say?

A After the test was done, he said I will call up Herbie to tell him the test is good. He calls up Herbie. He says everything reads okay.

Q Did he say anything after the telephone conversation to you?

A He said Joe, I am going to teach you how to mix heroin.

Q Would you please describe how he taught you to mix heroin?

A He took the two bags we opened plus another bag and the plastic containers that were in the trunk were already weighed so he laid down two wrapping paper on the floor, he pours about one container on the floor, finishes

opening the bag of heroin, lays it on the top. Opens another container, sprinkles that on the top. Then he mixes it. Then he takes another container, sprinkles it and he opens a third bag of heroin.

As he tells me to mix, he tells me it is a rule that you got to mix the heroin at least eight, nine times so the more you mix it the better the heroin and the mannita mixed together so when the customer tests it, it will be one good sample. In other words, it won't show a splotch on his test. So we mix the heroin and we have small bags with about -- he put 17-1/2 ounces in each bag. As I am filling the bags, he is putting it on the scale, adding and subtracting for 17-1/2 until all the heroin is in the bags. He makes sure again there is 17-1/2.

Q Do you recall how many bags you made on that occasion?

A About 12 to 14-1/2 kilos.

After all the bags are weighed, take the heat sealer and seal all the bags. He takes -- he holds two packages from the mix that he made and he puts the rest in the trunk, closes the trunk, we clean up all the equipment, wash everything down, put that back in the trunk. And he still had the last package that I gave him and being that he told me this is for a customer, I was relieved. I said

what is in that package I gave you. He tells me it is mix but the way he said it, like he grinned at me. So I said, you are going to make a delivery with a kilo of heroin and plus mix? So he opened the bag, he broke the seal, it has the seal, broke it, and broke another one and there was a bag that was a regular brown paper bag. He tells me its mixed narcotics. So I looked at him. I told him, you got me delivering heroin, you telling me its mix. And he explained to me, he says, the less you know, the less you know what is going on, you won't get nervous in case anything happens.

Q Was that the first occasion he told you what was in the packages he left in your home?

A Yes.

Q What happened after you had this conversation with him about the package?

A So we go back in the apartment, check the apartment to see if its clean the right way and we leave.

Q Did you receive a call from Mr. Mileto on February 10, 1972?

A Yes, sir.

THE COURT: Is this going into --

MR. NESLAND: This is a good place to stop, your Honor.

THE COURT: Come up to the side bar.

(At the side bar.)

THE COURT: I have a note from Mrs. Rosner who says she is ill and is having difficulty in continuing and wants an earlier adjournment. Is there any objection on the part of any of the defendants?

MR. DUKE: No, sir.

THE COURT: Any objection on the part of the government?

MR. LAVIN: No.

THE COURT: We will recess now until Wednesday morning.

MRS.ROSNER: Thank you very much, Judge.

THE COURT: Remember, we resume in 706 on Wednesday.

MRS. ROSNER: I appreciate it very much, Judge. Thank you.

(In open court.)

THE COURT: Ladies and gentlemen, we are going to recess now for the day. It is unimportant what the reason is, it has nothing to do with the case.
And we will resume with the trial of thiw case on Wednesday morning at 10 o'clock in the usual place in Room 706 on the seventh floor and I think all of you jurors know where the assembly room is for that.

Please try to be on time after all the holiday. Be sure that you make merry , but sensibly, and I hope to see you all in good spirits and good health and wish you all a merry Christmas.

(Jury excused.)

THE COURT: We will give the jurors a chance to lave the building and everybody can make themselves comfortable.

For those who don't know what the reason was, Mrs. Rosner wasn't feeling well and requested that we suspend a little earlier and that is the reason why we have suspended. I don't recall any open items that I haven't ruled on. If there are any or any reargurments of rulings, why just present them to me between now and openingon Wednesday so that I can give such consideration to them as they deserve.

I wish you all a merry holiday and hope to see you all back here in good health on Wednesday morning.

(Adjourned to Wednesday, December 26, 1973, at 10:00 a.m.)

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UNITED STATES OF AMERICA
v
BENJAMIN MALLAH et al.

73 Cr 881

New York, December 26, 1973
10:00 a.m.

(Trial resumed.)

(In the robing room.)

THE COURT: We have run into a little delay this morning. Juror No. 6, I believe he is, telephoned in this morning apparently about 8:30 or a quarter of nine from Rome, New York, and the first information I got was that he had been involved with his parents in an accident up there and was in the hospital.

We then telephoned to his home, and to his business office, and at his business office about half past nine this morning we got the information that they had just received a call from him and that it was his in-laws who were in the accident, and he explained that the Grulichs were supposed to be having a party Saturday night and that the party was called off, and that was the reason why the office was told about it.

We are trying now to track down, in the absence of knowledge of the in-laws' last name, we are trying to track down in the hospitals up in Rome who actually is involved in

the accident, and whether Mr. Grulich is up there holding his wife's hand or was himself involved in the accident, and I have no report on that yet.

I just don't know what the answer is going to be. I thought that it would be best to wait a short time, in any event, and find out what information we dig up.

I thought I would tell you about this. The other missing jurors have shown up.

THE CLERK: They are all here.

MR. LaROSSA: I think we agree with that procedure, your Honor.

THE COURT: I have no way of guessing what, if any, involvement the juror himself is in trouble on, and we just have to wait until we get some word. They are apparently checking through the state police up there and we will try and get some information. That is the reason for the delay.

I suppose what we ought to do is tell the jurors there is going to be a delay this morning without discussing any of the reasons for it.

Why don't you tell them to be comfortable and there will be a short delay this morning and the judge will make an announcement in about a half hour or so.

MRS. ROSNER: Your Honor --

THE CLERK: The jurors are to remain in the

jury room?

THE COURT: Oh, yes. Don't have them roaming around.

I have another thing this morning The other day Mr. Duke raised some question about Mr. Lipsky's address, and I asked for a search of the records to be made, and this morning I received this memorandum from the probation officer. Here is a copy for the Government and two copies for defendants' counsel. I will hold onto the original.

The original is marked as Court Exhibit 11.

(Court Exhibit 11 marked.)

THE COURT: That I believe is in response to and in satisfaction of your inquiry, Mr. Duke.

MR. DUKE: Yes, it seems to be.

THE COURT: Now, Mrs. Rosner.

MRS. ROSNER: I was going to ask your Honor while we are all congregating here whether it would be appropriate to discuss our tentative scheduling plans for the remainder of the trial.

THE COURT: Off the record.

(Discussion off the record.)

(11:50 a.m., in the robing room, Mr. Nesland and all defense counsel present.)

THE COURT: The only progress to report is this,

that we have located the name of the in-laws of this juror.

I think that I have already told you about the telephone call that a co-worker received or his co-worker's wife received, reporting the accident, and the information that I got was that this co-worker's wife --

(Mr. Lavin entered the robing room.)

THE COURT: -- spoke to the juror's wife on Monday and said that the accident had happened about an hour out of Rome, and that her parents had been taken to the hospital.

I got no information indicating that the juror himself was involved in the accident or was injured. I did get the name of the parents. I myself tried to get through to the parents' home, which appears to be in Oswego, apparently, or borderline between Oswego and Rome, and there is no answer there.

The state police have been unsuccessful in locating the hospital to which these folks have been taken, and they have not yet located anybody that we want to talk to who could give us personal information on this subject.

I think subject to your views, what we might consider doing is to go over until tomorrow morning and spend the rest of today in the endeavor to track down the juror to find out whether he really is unavailable or whether, as I said before, he is holding his wife's hand up there.

Then we can determine what course of action to take tomorrow morning, depending upon the development of the facts.

Has anybody got a better suggestion?

MR. LaROSSA: No, sir, I think that is wholly agreeable and makes sense.

THE COURT: I see no reason for just holding this jury sitting here or even immobilizing counsel for the present purpose.

So, with the unanimous approval of all, I will call the jurors into the courtroom, and briefly explain that a family mishap occurred, and we are trying to locate the juror to ascertain the extent of it, and we will go over until tomorrow morning while we are doing that.

MR. LaROSSA: Fine, sir.

THE COURT: All right. Very good.

(In open court; jury present.)

THE COURT: Ladies and gentlemen, as you know, the Juror No. 6 is absent. The information that I had was that some mishap occurred to some members of his wife's family in an automobile accident upstate. As of yet, I haven't been able to ascertain whether this gentleman was also involved, because we haven't been able to get through to him.

We are making all inquiries, and we really don't

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know what did happen as yet, and undoubtedly we are going to be delayed several hours more trying to get the information from upstate.

Consequently, in discussing with counsel, we thought that it might be better should I excuse you now until tomorrow morning so that you don't have to sit around in this uncertain area of information that we have.

I am going to do that. As you see, we have had some misfortunes with our jurors, and I wouldn't want anything to mar the progress of this case by any misfortunes to anybody.

Consequently, please take extra precautions for your own safety and also bear in mind that while there have been interruptions, the case itself is not to form a subject of conversation either among yourselves -- I am talking about the facts as they have come out -- or with anybody else, because you must wait until you have heard the entire case on both sides and the judge's charge, which will set the ground rules for your decision before you can turn your attention to finding out what the facts are.

So I will ask you to keep an open mind on this case until the case is fully concluded, and I again ask you for your own sake to be cautious of your own personal safety.

I will see you all, hopefully, tomorrow morning and

hopefully the gentleman who is missing at the moment will be here tomorrow morning to start at ten o'clock.

You may be excused.

(12:09 p.m., the jury left the courtroom.)

THE COURT: We will now stand in recess until tomorrow morning, and the request is to give the jurors an opportunity to leave the floor before the audience is excused.

MR. PELUSO: If your Honor pleases, at this time I have an application to make.

I received a letter from Judge Kapelman directing me to appear in Bronx County Supreme Court tomorrow morning in connection with a matter, and I have discussed this with my client and with Mrs. Rosner. She agrees to cover for me during the period of time that I will be gone. I don't imagine it will be more than a few hours, and my client consents to this.

THE COURT: Mr. De Franco, is that satisfactory?

MR. DE FRANCO: Yes.

THE COURT: That during the absence of Mr. Peluso your interests will be cared for by Mrs. Rosner?

MR. DE FRANCO: Yes.

THE COURT: That is agreeable to you?

MR. DE FRANCO: Yes.

THE COURT: Please go and come as rapidly as you can.

MR. PELUSO: I will, Judge.

THE COURT: All right. We will stand in recess then until tomorrow morning. As I said, give the jurors a chance to get off the floor.

(Adjourned to Thursday, December 27, 1973 at 10:00 a.m.)

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UNITED STATES OF AMERICA

vs.

BENJAMIN MALLAH, et al.

Before:
HON. MILTON POLLACK,
District Judge.

73 Cr. 881

New York, December 27, 1973,
10 A.M.

(Trial continued)

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(In the robing room, all counsel present except Mr. Peluso.)

THE COURT: The latest word on the missing juror is that nobody has been able to contact him, his wife, his in-laws.

They now think they have the wrong name for the in-laws. A check at his residence indicates that he hasn't been there. The accident hasn't been located, and we are up a blind alley on the subject.

There is no way of knowing now what has happened to this man or where he is.

MR. LaROSSA: Could we check back with his employer, your Honor, and find out whether they have--

THE COURT: They had his employer on the phone a couple of times yesterday afternoon. They had his personal friend at the chemical plant that he works at on the phone. They called him in the evening.

He volunteered the information that maybe it wasn't Sweetie, it was MacSweetie, so that started everybody off on a new chase for a MacSweetie, and they don't think that they have a name that they can go by.

What do you suggest we do under the circumstances?

MR. LaROSSA: Frankly, I have trouble believing the whole thing, and probably he was on vacation or something.

THE COURT: I am slowly coming to that conclusion.

MR. LaROSSA: If it wasn't Christmas week, I might have a little more belief.

THE COURT: I am slowly coming to a similar suspicion, and yet I cannot tie that suspicion to the fact that the man in charge of the laboratories, his friend, said that the wife of this friend spoke to the wife of the juror on Monday, who reported the accident.

MR. LaROSSA: The plant doesn't have her maiden name, by virtue of an application he has filled out?

THE COURT: They are checking back accident information, who to notify in case of accident, checking back all sorts of things to see if they can develop any circumstances.

MR. LaROSSA: What I was thinking of is an employment application, particularly where these jobs are

sensitive.

THE COURT: That is the first thing I asked for yesterday morning at half past 9, and I would have thought that he would have been located and run down by this time.

From what you know of what they are doing, do you think that they are making any progress?

MR. LAVIN: I don't.

THE COURT: The state police haven't reported anything about him?

MR. LAVIN: They have checked emergency rooms in hospitals.

THE COURT: No such accident as far as they know?

MR. LAVIN: They can't find any accident.

MR. LaROSSA: Has the report been updated to this morning, Mr. Lavin?

THE COURT: I just spoke to the agent about ten after 9, and he asked me if he should keep on. I said that he should keep on, and also see to it that a subpoena is served on the gentleman. I want to have a conversation withhim when and if.

Unless there is anything that we don't know about that might give somebody some hope, it appears to me that we might be sitting here for a week trying to find him.

I am reluctant to take the indicated action because of the delays that we are running into on the forward progress of the case because of this holiday season.

MR. LaROSSA: I am very concerned about it too. I really think that we have an excellent chance now of not finishing this if we remove that juror.

THE COURT: I don't want to have to have an exercise in futility here and keep on going and then find out we are not completing it.

I rather suspect that the thing that set a bad standard was that the day after we impaneled the jury, that one fellow was let go, and his overnight qualms of conscience were most peculiar in light of the fact that he wanted to go on holiday on Friday after he had answered to the specific question as to whether there was anything that he could think of or knew of.

MR. LaROSSA: He brought that up? I wasn't here.

He actually brought up that he wanted to leave this Friday?

MR. MITCHELL: That was one of the reasons.

THE COURT: He came in. He said that, "I had planned on a vacation Friday, but I put that aside when I realized I was to be selected as a juror."

mbh5

All right, shall we select an alternate?

MRS. ROSNER: I don't think we have much choice, Judge. I really don't.

MR. LaROSSA: What frightens me is the fact that we are not going to finish with this jury, but I don't see what choice we have. If there is any way, even a possibility of getting him back --

THE COURT: We have two alternates, and hopefully, we have just three days to go.

MR. LaROSSA: We will only have one alternate now.

THE COURT: Yes. There will only be one remaining alternate.

MR. LaROSSA: I don't see any choice.

THE COURT: One possibility is to sequester the jury, but I don't know who that is going to hurt more, whether it's going to hurt the court or the government or the defendants, and I don't think it will help anybody.

MR. LaROSSA: I think that would be terribly cruel at this time of year.

THE COURT: It is really not indicated sufficiently for this kind of case.

All right, I think that what we will do is, in view of the complete blackout of information here as to

mbh6

this juror and no prospect at the moment of ascertaining his whereabouts or what has happened to him, we have no choice but that I think I should call in the alternate to take his place. Do you agree with that, Mr. Lavin?

MR. LAVIN: Yes, your Honor.

THE COURT: Everybody agree?

MR. MITCHELL: Yes.

MR. DUKE: Your Honor, may I suggest on the ground of caution that the jury be spared the mystery of the situation. I am concerned that they might speculate that some foul play --

THE COURT: What do you want me to tell them? I will be glad to tell it to them.

MR. LaROSSA: That he was unable to return because of personal reasons. Otherwise, they are liable to do the same thing.

MR. DUKE: Tell them that your information is that there was an accident in the family.

THE COURT: I will just repeat yesterday's information.

MR. LaROSSA: Yes, make them think almost that we verified the fact and that is the reason he can't come back.

MR. LAVIN: Perhaps some kind of mild warning

mbh6a

that can be put in such a way that he was only excused because we couldn't find him.

MRS. ROSNER: Then they must be told when we find him he is going to be punished for contempt.

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen. Unfortunately, the results of the accident that was reported to us have not yielded the juror and we just don't know what the situation upstate is, and under the circumstances, and with great reluctance, we are going to go ahead and hope that he gets along all right, and when we hear from him we will report, hopefully, that there are no serious injuries.

Mr. Meade, I am going to ask you to take your place in the jury box as No. 6. You just move right down.

Now, ladies and gentlemen, we are in this posture. Sometimes in order to protect a jury against itself there is such a thing as sequestering the jury, which means that you are boarded at the expense of the United States Government and kept together for your own safety and security. I am not going to do that here without any sufficient indication that that is necessary, and certainly I am very reluctant to even think about it at this time of the year when people have their family and home problems, and the reasons are obvious.

It would be a disservice to the interests of

justice to find that a case cannot go through its normal course because a juror does not appreciate the significance of staying together until the case is completed. That has not been the situatin with this jury, and the only reason I mention it is that now we are down to the point of getting close to the limit, and here I have to ask you to make a special effort to see to it that your fidelity to duty is carefully observed, which means promptness. I realize that traveling is difficult and that there are delays that cannot be accounted for.

Butwhen one is late you dislocate everybody. Safety, that is for your own safety. I have implored you each day to be careful in going and coming. We have had two bad experiences now on the subject of safety, and I would like from here on until the conclusion of this case, which is not too far off -- this case is not an endless process. We can look forward to just several days more and we will be through, we will be at the point of being through.

So I am asking each one of you and every one of you to please be careful about your goings and comings. Please be careful, especially during this holiday period. You know, when people relax, that's when accidents occur and illnesses occur.

Please do your utmost to get here so that we can all start on time, and in that way we will get down to the thing that we are all here to do and that is to administer justice in this case.

I will have the clerk swear Mr. Meade.

(Alternate juror duly sworn as Juror No. 6.)

J O S E P H C O N F O R T I resumed.

MR. NESLAND: Shall I proceed, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. NESLAND:

Q Please try to keep your voice up, Mr. Conforti.

Q Last Monday you testified about a trip you took to Philadelphia with Louis Mileto. Do you recall that?

A Yes, sir.

Q Do you recall when you took that trip to Philadelphia with Louis Mileto, the time of the year?

A Beginning of July or middle of July.

Q 1971?

A Yes, sir.

Q You also testified that upon returning from Philadelphia with the $60,000,that Louis Mileto told you he had to go get more money. Do you recall that?

A Yes, sir.

Q Do you know how much more money he got?

A 17,000 more.

Q What did he do with that money?

A Well, after I made the large dimensions with the money he gave me he returned to the station, counted the money that I made up for him and put that money back in the box, and then we sealed it.

Q Put all the money in the box?

A Yes, sir.

Q You also testified on Monday to delivering four packages of heroin to Louis Mileto. Do you recall that?

A Yes, sir.

Q Do you recall the first occasion that you made a delivery to the Omaha Diner?

A Yes.

Q Do you recall when that was?

MR. MITCHELL: Your Honor, I am going to object to form. This testimony is not limited to narcotics.

THE COURT: Please modify the form.

Q Do you recall testifying that you delivered a package to Louis Mileto at the Omaha Diner?

A Yes, sir.

Q Do you recall when that occurred?

A The end of September, beginning of October.

Q You testified to a second occasion on which Louis Mileto came to your house to pick up a second package. Do you recall when that was?

A Also in October.

Q You also testified to another occasion in which you delivered a third package to the Omaha Diner. Do you recall when that was?

A That was around the beginning -- middle of November. It was just before the holidays.

Q By the way, where is the Omaha Diner?

A In Queens, on Queens Boulevard.

Q You testified to one other occasion on which you delivered the fourth package to Zelma's apartment. Do you recall when that was?

A That was right after the holidays. It was in January.

Q Do you know where Zelma's apartment is, where it is located?

A It is about six to eight blocks away from the diner.

Q Did you receive a call from Louis Mileto on

February 10, 1972?

A Yes, I came home from work. My wife told me Louis called, for me to stay home.

A I got a call from him a couple of minutes later. He tells me to meet him on 59th and Second Avenue.

MR. LA ROSSA: Objection.

THE COURT: Taken subject to connection, Mr. LaRossa.

Q Go ahead.

A And meet him on 59th and Second Avenue around 4, 4:30. Tells me to park a couple of blocks -- right next to the 59th Street Bridge. I meet him there. Tells me to stay in the car, that he has to meet a customer. He walks off. About a half hour later he comes back, tells me, "Joe, we have to go back to the apartment. Follow me." He's telling me he is going over the 59th Street Bridge.

We get -- he gets in his car, I get in mine, he takes off, skips two lights, goes on the 59th Street Bridge.

The reason why he skipped the two lights is --

MR. LA ROSSA: Objection.

THE COURT: No, no, you may not state the

reason. You may state what you saw or what you heard, not the reason.

A After he skipped the two lights, I followed him on the bridge. We arrived at Zelma's apartment, we park the cars, I give the doorman a tip, we go upstairs, he is telling me about the -- it's a special customer and we have to do a special mix.

He opens the trunk, he takes out two half kilos of mixed heroin that I mixed.

MR. LA ROSSA: Note my objection to this entire line, if it please the court.

THE COURT: The testimony of the transactions between these two persons is being received subject to connection on the grounds previously indicated.

BY MR. NESLAND:

Q What happened after he took out the two bags of mixed heroin?

A He tells me it's a special mix for a special customer. He takes out another half kilo pure heroin, cuts it open and throws an ounce in each of the -- we added an ounce of each into the mixed heroin that we mixed from the time before.

He tells me he has to meet the customer around a quarter to 8, 8:30, so it was a rush mix. He didn't like the arrangement of the setup for the customer. The customer didn't have all the money and he didn't like the deal. He didn't like the people.

I told him, "Why are you going through it?"

He says, "I got to go through it."

So we made the application. We filled the bags up, we sealed them, and he takes off. He tells me, "Don't leave the apartment until you hear from me."

And I remained behind cleaning up the mixing material, put the screens and everything I used back in the trunk.

Q Did you wait in the apartment then?

A Yes, sir. About 10, 10:30 Zelma arrives. I told her to leave the apartment --

MR. MITCHELL: Objection.

THE COURT: Strike out what he told Zelma. She arrived. Did she leave?

THE WITNESS: Yes.

Q What happened after she left?

A About 12:30, a quarter to 1, I called up Herbie and asked Herbie, "What happened to Louis?"

MR. LA ROSSA: Note my objection to this.

THE COURT: Received subject to connnection.

A Herbie tells me Louis got pinched and for me to take all the goods from the apartment and to meet Sonny Gold on 48th and Broadway.

I take the stuff out of the trunk, put it in the bag, but before I did that Zelma arrives. I asked Zelma, "Do you know what's in the trunk?"

MR. MITCHELL: Objection, your Honor.

THE COURT: You may not tell what you asked Zelma. Strike that out.

Q What did you take --

A About six half kilos of pure heroin and about eight bags of cut heroin and a couple small bags.

Q What did you do with it when you took it from the trunk?

A I put it in a brown paper bag. I left the

apartment, went down to 48th and Broadway. When I arrived there there was Sonny Gold on the corner. I take the stuff out of my trunk, give it to him, puts it in his trunk and I leave.

Q Did you go home?

A Yes, sir.

Q Did there come a time that you received a telephone call from Herbert Sperling?

A The next day.

Q What did he say to you and what did you say to him?

A Gets on the phone, he tells me, "I told you to bring everything from the apartment," that I just brought the heroin. So he told me to go back to the apartment and "Make sure you clean out everything."

I go to the apartment, I wait for Zelma, practically all day until she returned from work in the afternoon, around 4, 4:30. She lets me in. I clean up the whole apartment. And I was told by Herbie when I do all this, for me to go and register in a hotel on the East Side.

After I leaned the apartment up I got off on, I think it was, 53rd Street --

Q What did you take out of the apartment, Mr.

Conforti, do you recall?

A I took out the mixing equipment, the mannite, the scales, the screens, thermometers, all the paraphernalia that was in the apartment. I left the trunk behind.

Q What did you do with it?

A I registered in the hotel on the East Side. I got the hotel room, I left all the stuff in the room. I go back to 54th Street and Seventh Avenue and I meet Herbie.

He tells me, "Did you get the stuff?"

I told him what hotel I was in. He tells me to go with Sonny Gold to the hotel and he will take it from there. So I left with Sonny Gold's car.

He drives me to the hotel, I go upstairs, clean out the room, go back downstairs, put it in the trunk, and both go back to the West Side, 54th Street and Seventh Avenue.

Q What happened after that?

A I leave.

Q Did you have an occasion to talk with Louis Mileto after he was arrested?

A The next day, right after he got on bail.

Q What happened on that occasion?

A Came to my home. He comes in, tells me,

"Joe, I'm in a lot of trouble. Things don't look good for me."

And then I get another call from Herbie. I get on the phone. Herbie asks me, "Where is Louis?"

I says, "He is right here."

I give him the phone. Louis says, "I will be right down." He hung up.

Louis said, "Joe, I amgoing down to Herbie's home on Spring Street."

He leaves. A couple minutes later the phone rings, answer, it's Herbie. He asked me, "Did Louis leave yet?"

I told him, "Yes."

He says, "Are you sure?"

I said, "Yes, he is on the way."

He said, Don't worry, kid, I will straighten this out if it's the last thing I do." Even before I could answer he hung up on me.

Q What didyou do?

A Iwent down to Spring Street, to Herbie's home. After I arrived there, when his wife let me in, there was Ben Mallah, Herbie and Louis in the bedroom. Herbie is asking Louis, he is supposed to have a number of packages of heroin --

MR. LA ROSSA: I object and move this be stricken.

THE COURT: Strike out what he is supposed to have. Just state the conversation or what you saw.

BY MR. NESLAND:

Q What did anybody say which you heard in the house on that occasion?

MR. MITCHELL: Your Honor, would you ask the witness to talk a little louder, please.

THE COURT: Yes, will you speak a little louder so the jurors and counsel can hear you.

A Herbie is telling Louis he is supposed to have the certain packages and when the kid delivers it, "I find extra packages and they ain't supposed to be there."

Louis says, "I was doing this for a gift for you. I am doing this for a surprise."

Herbie turned around and says, "I don't need that kind of surprise or gift. If I want something like that I will buy it." He told him to leave the house.

Q Was anything else said?

A Between that conversation and Herbie's yelling to Ben, "I told you so," Ben is going, "What could you do?"

and he is answering, "Yes." Louis comes out of the bedroom, signals me to go downstairs.

Q Did you leave?

A Yes.

Q Is the Ben Mallah the one that's here?

A Yes.

Q At that time or in the year 1971 did Ben Mallah have a moustache?

A No, sir.

Q Did he ever have any more than he has now?

A No, sir.

Q Pardon me?

A It's about the same.

Q After that occasion did there come a time that you began working for Herbert Sperling?

MR. LA ROSSA: Objection.

THE COURT: The form is objectionable.

Q Did there come a time that you began doing anything for Herbert Sperling?

A It was in the beginning of March.

Q 1972?

A Yes.

Q What did you start doing?

A I started doing work around his home in

Bellmore.

Q Did there come a time you started doing anything else?

A Yes.

Q What was that?

A Mixing narcotics.

Q Do you recall the first occasion on which you mixed narcotics for Herbert Sperling?

A I was doing some painting outside of his home.

Q When was this, Mr. Conforti, if you recall?

A March 8th.

Q What happened on March 8th?

A He calls me inside, tells me to register in a hotel. So I asked him, "Where is the nearest one?"

He said to go on Sunrise Highway, make a left and go to the Gateway; make a right, you go to the Bar Harbour. He gave me $30, I left and registered in the hotel. I came back, I told him the hotel I was in. He told me to hold the keys. I go back to painting.

Towards the afternoon, around 4, 4:30, Sonny Gold arrived. I went downstairs with Herbie. He had

a box of mannite and he put a couple pounds in a plastic bag, told me that the only thing I was supposed to do, go back to the hotel and mix -- in other words, he gave me the exact weight, for me to mix whatever Sonny Gold had, for me to go to the hotel and just mix it together.

Q How much did you mix on that occasion, do you recall?

Q About two, two and a half kilos of heroin.

Q How much did you end up with mixed heroin?

A Twelve to 14 bags.

Q How many occasions did you mix with Sonny Gold?

A About two or three times.

Q Where did you mix on the occasions that you mixed with Sonny Gold?

A Bar Harbour or the Gateway.

Q I show you Government's Exhibit 14 and Government's Exhibit 15. Is that your name, Joseph Conforti?

A Yes.

Q Did you write that?

A Yes, sir.

Q I would like you to note the address. Would

you please read that address?

A 2 --

MR. MITCHELL: They are not in evidence. I object.

MR. NESLAND: They are in evidence.

A 2 Sadore Lane.

Q What is that address?

A That's in Yonkers, my old address.

Q Do you notice the dates on those, please?

A March 8th was the first time I mixed.

Q That was with Sonny Gold?

A Yes.

Q The second one?

A March 31, '72.

Q What was that occasion?

A I mixed heroin.

Q With Sonny Gold?

A Yes.

Q And Government's Exhibit 15, the date of that, please?

A I think it's June 10th, 6/10/72.

Q Did you meet with Sonny Gold on that occasion?

A Yes.

Q How much heroin did you mix on those other

occasions with Sonny Gold?

MR. LA ROSSA: I object to the form of the question.

THE COURT: What did you mix on those occasions? The objection is sustained. What did you mix?

THE WITNESS: Heroin. Two and a half kilos.

THE COURT: On March 8th?

THE WITNESS: Yes,sir.

THE COURT: What was the quantity?

THE WITNESS: Of pure heroin?

THE COURT: What did you mix?

THE WITNESS: I mised 2-1/2 kilos of pure heroin and wind up with 12, 14 half kilos of mixed heroin.

THE COURT: On March 31st what did you mix?

THE WITNESS: The same; two and a half kilos of pure.

THE COURT: You wound up with what?

THE WITNESS: Twelve to 14 half kilos of mixed heroin.

THE COURT: On June 10th what did you mix?

MR. NESLAND: Do you recall?

THE WITNESS: It was about two kilos of pure heroin.

THE COURT: What did you wind up with?

THE WITNESS: About 12 half kilos of mixed heroin.

BY MR. NESLAND:

Q Did there come a time that you began mixing with anyone other than Sonny Gold?

A Yes.

Q Who was that?

A Ed Schworak.

Q Do you recall when you began mixing with Ed Schworak?

A In September.

Q Do you recall the first occasion you mixed with Edward Schworak?

A Right after we opened the pizza restaurant in September.

THE COURT: What year?

THE WITNESS: 1972.

THE COURT: Yes.

A Herbie comes with the exact quantity of mannita that I would have to mix. He tells me when the business is slow, you go and register in the hotel and leave the stuff in the hotel. Then you come back and Sonny Gold and there will be a fellow named Ed with him. I registered in the hotel during the day. I left the mannita and everything I needed to mix it with. I returned back to the restaurant about 8, 8:30, Sonny Gold arrives with Ed Schworak. They come in and I leave with them. I go back to the hotel with them and I mix the exact weight that Herbie gave me and what Sonny Gold had. I just mix it together.

Q How much did you mix on that occasion?

A About two and a half kilos of pure heroin.

Q How much did you end with?

A 12 to 14 half kilos.

Q On how many occasions did you mix with Ed

Schworak?

A About six to eight times.

Q Where did you mix with Ed Schworak on those occasions?

A At the Gateway and the Bar Harbor.

Q I show you Defendants' Exhibit 16 and Government's Exhibit 17, guest registration receipts from the Bar Harbor and the Gateway. Is that your signature on Government's Exhibit 16?

A Yes, sir. The same address.

Q What is the date of that?

A 9-10-72.

Q I also show you Government's Exhibit 17 which are receipts, guest receipts from the Gateway Motel and ask you to look through those and tell me whether or not those are your signatures and the dates.

A 9-16.

Q Is that your signature?

A Yes, sir.

9-17.

Q Is that your signature?

A Yes, sir.

9-19.

Q Is that your signature?

A Yes, sir.

9-21.

Q Is that your signature?

A Yes, sir.

9-24.

Q Is that your signature?

A Yes, sir.

9-25.

Q Is that your signature?

A Yes, sir.

Q What did you do on those occasions at the Gateway and the Bar Harbor?

A The same procedure. I used to get the exact weight from Herbie, I would go to his house and get it from him or he will come to the pizza store and give it to me and tell me that night you got to be mixing heroin. During the day I would go and register in the hotel, when it was slow, to leave it in the hotel. In the evening Sonny Gold and Ed would arrive. I would listen to them and mix it together.

Q Do you recall how much heroin you mixed on those occasions approximately?

MR. LaROSSA: Objection.

Q Do you recall how much you mixed on those occasions

and what you mixed?

A On that occasion was just a half kilo and the others was 2, 2 and a half kilos.

Q How much did you end with?

A The majority of the time 12 to 14 half kilos of mixed heroin.

Q Did there also come a time that you began mixing with someone other than Ed Schworak and Sonny Gold?

A Jack Spada.

Q Do you recall the first occasion you mixed with Jack Spada?

A Yes.

Q When was that?

A The middle of October or towards the end of October.

Q What year?

A 1972.

Q What happened on that first occasion?

A I arrived at Herbie's home in Bellmore. His wife lets me in. I asked, where is Herbie. She tells me downstairs. I go downstairs in the basement. There is Herbie mixing heroin on the pool table. Jack could not mix because he burnt his hand on a mineral oil test and he had all bandages on his fingers.

THE COURT: Who burned his hand?

THE WITNESS: Jack.

THE COURT: Jack what?

THE WITNESS: Spada.

THE COURT: Was he there?

THE WITNESS: Yes.

THE COURT: Go ahead.

A So I helped Herbie mix the heroin on the pool table because Jack was -- complained that the heroin went into his skin. It was irritating his burns. So I helped Herbie mix the heroin. Wind up between 14 to 18 half kilos because it was a big mix.

Q That was at Herbie's home in Bellmore?

A Yes, sir.

Q Did you have occasion to mix with Jack Spada after that?

A Right after I mixed, I wrapped all the bags that we had on the pool table, put them in a paper bag. Herbie tells Jack, you know where to deliver it and for you to contact him. So it was the next day I meet Jack on the avenue, 54th Street and 7th Avenue. We set up a deal like if he called me the night before, for me to stay home the next day, that meant that I had to do some mixing with him.

Q What was the procedure when you first began mixing with Spada?

A At the beginning, he will get the exact weight from Herbie or I will get the mannita or I will bring it home and the night before Jack will tell me where to meet him. Sometimes we mix in the apartment on 54th and 7th Avenue. Between 7th and Broadway. We had an apartment there.

Q An apartment at 54th and 7th Avenue?

A Yes.

Q Where else did you mix on those occasions?

A The Gateway, the Bar Harbor. Sometimes -- the first time was in the Skyline.

Q Did you ever receive a telephone call at your apartment from Jack Spada?

A Yes. He tells me to meet him on Pelham Parkway. It was around 8:30. I arrive at Pelham Parkway. Gets out of the cab with a box of mannita, about 50 pounds of mannita. I drive to my home with him in the car. Tells me, leave this in your home in case we need it for an emergency so I will have some. It's a mix.

Q You put it in your house?

A Yes, sir.

Q Was there an occasion when you mixed with Sonny

Gold and Jack Spada when someone else was present?

A Yes. Jack calls me up, tells me to meet him at the apartment.

Q Do you recall when this was approximately?

A The middle of November. Just about the holidays.

Q 1972?

A Yes, sir.

Q What happened?

A He calls me up, tells me to meet him at the apartment. So I drive down to 54th Street, park my car, the apartment is between 7th and Broadway. I meet him on the corner and he had the keys to the apartment so he let me in. He opened the closet in the apartment. There was about three, three and a half kilos of pure heroin. So we started mixing heroin. While mixing it, we get a knock on the door. It was Sonny Gold and Barney.

Q Is the man you said is Barney in the courtroom today?

A Yes.

Q Please point him out to the court and jury.

A The end man right beside his lawyer.

DEFENDANT BARRETT: Did you send me down to get some sandwiches for you when you paid me?

THE COURT: Will you please sit down and just stay

in order. The jury will ignore anything that comes from anybody or any source other than the witness stand. Nobody is privileged to communicate with you in any way for any purpose on any subject in the giving of evidence except through the witness chair.

MR. NESLAND: May the record reflect the witness has accurately identified Barney Barrett, the defendant.

Q What happened when Barney and Sonny Gold arrived on that occasion?

A We get up from the mix, we open the door, Sonny Gold and Barney come in. They walk into the one bedroom that we had the mix on the floor. Sonny Gold asked Jack, when is it going to be ready. That we have customers waiting. Jack turned around and said, it will be 20 minutes to a half hour. So I told him, wait outside, go downstairs and we will let you know when we finish. They both leave the apartment and we continue to mix. About half hour later Sonny Gold and Barney arrived again. And by that time we already mixed and we started putting heroin into sealed bags, about 17½ ounces apiece. Sonny Gold says, my end is ready. So I asked him, how many bags do you need? So he needs five bags, two and a half kilos. The five that we already sealed, put that in a brown paper bag. Sonny leaves. I lock the door, go back in again, continue

mixing and Barney wanted five bags. We filled the bags up, weighed them, sealed them, put in another plastic bag, sealed them, put it in a brown paper bag, handed it to Barney, Barney leaves. So Jack and I remain mixing the heroin that we have left over. We had about eight bags. When they are all sealed and put in the bag, we put it in a closet, cleaned up the mess that was on the paper, wash all the equipment down, put that in the closet. We go downstairs, Herbie is standing by the barber shop, tells me, how was the mix? I said, the mix was good. He asked me if I mixed it eight or nine times. I told him yes. And I left.

Q Did you have a conversation with Jack Spada after that?

A This stuff that was in the closet that was supposed to be delivered the next day.

MR. MITCHELL: Objection, your Honor. That's not responsive.

THE COURT: Strike it out.

Q What was the conversation you had with Jack Spada?

A The conversation was that I am at the Stage Delicatessen.

Q Where is the Stage Delicatessen located?

A Between 54th Street, the next corner. Or in the

block. Jack comes into the Stage. He is mad, cursing. I told him to sit down. I asked him what was wrong. The stuff that was in the closet he delivered. He said he had two and a half kilos that he is supposed to deliver, give it to Barney. Turned out to be --

MR. MITCHELL: Objection, your Honor.

THE COURT: Strike out what he was supposed to do. Just state what the conversation was. What was said to you.

A I asked him what was wrong. He says he delivered two and a half kilos to Barney in a parking lot and that Barney had his customer waiting right there and the customer ain't supposed to see me, being that I am mixing so if anything happens, the customer knows who the contact is and being I am close to Herbie, it could screw up the whole deal. So he was mad at Barney. He had some coke on him. He said I am going to disappear for a few days. He disappeared for a few days. Herbie asks me, where is Jack? Because he had the keys to the apartment. He had a few keys that he had made up for the apartment and Herbie didn't receive the copy of the key. And I told him Jack disappeared for a few days.

Q Do you recall having a conversation with Mr. Barrett in a bar?

A At the Stage.

Q Was that at the Stage?

A It was a few days after. Two days after. We were all sitting at the Stage. I was sitting at one end, Barney was sitting at another. Jack sitting on my right, Ed Schworak sitting in front of him. And Herbie. There was Benny.

Q Benny who?

A Ben Mallah. Barney is telling me if I ever run low with the mix, ask him or Herbie, don't wait until you run out because it takes a little time with his connection with a drug warehouse. Any time I would run out, I would ask Herbie, Herbie, I need more mix. The next day I would get it.

Q Do you recall ever having a meeting with Barney Barrett at a bar?

A It was during that time I rent out a car for Herbie. Tells me to meet him on 54th and 7th, right in the bar. I was in the bar, Herbie shows up. A couple minutes later Barney walks in with a bag of money. Hands it to Herbie, Herbie made a few phone calls, then he says Joe, I got to leave, I will be right back. Here is 15,000 in the bag, hold it. Herbie leaves. I stay with Barnie until he comes back. Herbie arrived about a half hour later, I give him the bag and I go home. I give him

the keys to the rented car I got and I go home.

Q Mr. Conforti, did you ever mix in hotels other than the Gateway and the Bar Harbor?

A Yes, the Skyline.

Q Pardon?

A The Skyline.

Q Where is the Skyline located?

A On the East Side, Tenth Avenue.

Q Here in Manhattan?

A Yes, sir.

Q Do you recall the first occasion on which you mixed at the Skyline?

A The first time was in December of that year, '72.

Q Will you tell the court and jury what happened at that time?

A Jack calls me up and tells me to meet him at the hotel. I meet him at the hotel with the mix I had and with the material I used to mix it with. Instead of walking in the hotel, I asked him, do you want me to register? He said no, you do not have to register because the old man got it, meaning Sonny Gold. We walk into the foyer and there is Herbie and Sonny Gold by the lounge. We signal Herbie we are going up to the room. We go up to the room and make a mix. Mix two and a half kilos.

Q How much?

A Two and a half kilos.

Q How much did you end up with?

A 12, 14 half kilos.

T3A

Q What happened after you mixed on that occasion?

A I go back downstairs. This time Herbie gave me 2,000 in the lounge, and I left.

Q Did you mix with Jack Spada in the Skyline on another occasion?

A Right after the holidays. It was in January.

Q What happened on that occasion?

A Well, the mix I had home wasn't enough. I told Jack I was running a little low. He says, "Don't worry. Bring whatever you got to the hotel."

So I meet him at the hotel.

Q What year is this?

A '73.

Q Did you have a conversation with anybody before you mixed on that occasion besides Jack Spada?

A I went down to 54th Street and Seventh Avenue. It was around 2 o'clock in the afternoon. I meet Sonny Gold. I asked him where Herbie is.

Herbie at that time was over his mother's. He asked me -- told me that Herbie is over his mother's house, and for me to go get some coffee and sandwiches, that Herbie is on the lam because he thinks that he's kind of hot, that he's staying over his mother's for that week.

I go to Eighth Avenue; there's a coffee shop. I

get a couple of sandwiches and coffee.

I go to his mother's apartment, knock on the door. He lets me in.

We had the coffee and sandwiches. Jack comes in. Herbie turned around and told him, "How come you're not at the avenue? Did the customers show up?"

Jack says no. Herbie told him to leave and wait for him. He says, "Be down in 15,20 minutes."

He lets Jack out, locked the door, took a quick shower, came out, got dressed, took some money out of a case from underneath his mother's bed, opened it up, took out $10,000, puts it in his pocket, locks it, and puts it back underneath his bed -- underneath the bed.

Q Do you know what the denominations were?

A Fifties and hundreds.

Q What happened after that?

A We both leave the apartment. We go back around the corner. There's a municipal parking. He still had the car I gave him from a few days before.

He gets in and drives, and we go down to 54th and Seventh Avenue. Sonny Gold is on one corner. Jack is on another.

We call Jack over. He tells Jack, "Did you get the hotel room?" He says no.

He hands me $30. He says, "Joe, do me a favor. Go up to the hotel, at the Skyline, and register and come right back."

I get in a cab. I go on the East Side, register, come back in the cab and go back on 54th Street.

Q I show you Government's Exhibit 18 and ask you if that is your signature.

A Yes, sir.

Q What is the date of that guest registration certificate from the Skyline?

A January 10, '73.

Q Do you recall if that is the occasion that you are talking about?

A Yes, sir.

Q What happened after you went back on the avenue on that occasion?

A After I arrived, I asked Jack, "Do you want me to go home and get the rest of the mix I have?"

He says, "No, I got some in the car."

We got to the parking lot. I think it was Kinney Parking. He had one -- he had two cars there. He opens one. He didn't have the -- he took a bag out of one. He opened another car and gave me some mix.

I take that back to the hotel and I stayed there

until he arrived. I waited about an hour, hour and a half.

He arrives at the hotel. He comes with three, three and a half kilos of pure heroin, and we started mixing.

While the stuff is on the floor, we start weighing the bags, seventeen and a half ounces, and leave the bags open, and we continued doing that until all the heroin is off the floor.

He ran short of mix -- we ran short -- I think it was about eight ounces. He says, "I will call up Barney."

I told him not to use the phone, but he used the phone anyway from the hotel. He called up the bar at 54th. He gets on the phone, he asks for Barney. I guess Barney came on the phone.

He says, "I ran short. I need some more -- mannita."

He says, "Joe, I will be right back. Take me 15, 20 minutes," and for me not to touch anything.

So he leaves the hotel, comes back. He's got some milk sugar that's in square blocks like when you buy soap.

You unwrap it and you got to squeeze it, and it turns to powder, and you rub it through the screen.

So we took half of that mix and mixed it all together, about seven, eight times until it was the right amount.

We seal the bags and put them all in one big

shopping bag.

He leaves. I stay behind, cleaned the hotel room. After everything is cleaned up, I go home.

Q On how many occasions did you mix with Jack Spada?

A Anywhere between one dozen to two dozen times.

Q What locations did you mix with Spada?

A The Gateway Hotel, the Bar Harbor out in Long Island, the Skyline, and the apartment on 54th Street.

Q Did there come a time that you began mixing with somebody else?

A Yes, John Caruso.

Q When for the first time did you meet John Caruso?

A At the end of March of '73 or beginning of April. No, it was--about the beginning of March of '73.

Q Tell the court and jury the circumstances of meeting John Caruso.

A I get a call from Herbie the night before telling me to come on the avenue around 2 o'clock. I get on the avenue at 2 o'clock. I go into the Stage.

When I walk in the Stage, there is Herbie sitting at a table, and there is another man sitting on the other side. I sit down. Herbie introduces me to Johnny Hawks.

Q Do you know Johnny Hawks by another name?

A John Caruso. He tells me, "He is going to be

working with you. You are going to become partners in mixing heroin," and for me to set up arrangements so that any time he wants to contact me, you know, like if he tells me the day before, "Joe, stay by the phone," that meant the next day that we had to mix.

Herbie leaves. He tells me -- John tells me that he had an apartment in Harlem that was too hot. They had it for a long time. They had to move some stuff they had in it.

I asked him if he wants me to help him. He says, "No, because if you go there, they will see a strange face," and that he will take care of it by himself.

So after we ate lunch, I go back out. John goes in the cigar store. There is Leo, there is Johnny Hooks.

Q Do you know Johnny Hooks by another name?

A John Capra.

Q Do you know Leo by another name?

A Leo Guardino.

And John walked into the cigar store, and so Jack was on the corner --

Q Jack Spada?

A Yes. I am asking him about John Caruso. He is telling me that Herbie and Leo and Hooks became partners, and the kid, John, is doing the same thing I am doing, but

he delivers the stuff, and for me -- I am going to do the same job, to mix.

I asked him who is Leo. He tells me that Leo is the heavy man, that he brings-- he's got the connection of bringing the stuff, getting the stuff, and Hooks is the organizer, and then Johnny works for him mixing and delivering

b2 to customers.

I walked back into the cigar store. Leo is telling Herbie to make sure I write my telephone number on a piece of paper. Herbie tells me to write my number on a piece of paper, so I go to the counter, ask the man for a pencil and a piece of paper.

He gives me a piece of Winston cardboard from a carton of cigarettes.

I write my number on it. I hand the number to Herbie. He hands it to Leo. Leo hands it to John. John turns around and tells Johnny Hooks, he says, "John, do you want me to give the kid everything in the apartment?"

John turned around and said, "No, just give him the mix and everything he needs."

On the way walking out, Johnny Hooks tells me, "Joe, just listen to him, just do like what you are doing now. Just make sure you are now followed and everything is going to be okay."

So on the way out I talked to John Caruso again. He says, "Joe, I will contact you and tell you when, when do we make a meet," after he gets the stuff out of the apartment. John Caruso leaves.

Q Did there come a time when John called you, John Caruso?

A It was a couple of days after he called me up.

Q This is what time of year?

A Still in March.

Q 1973?

A Yes.

Q What happened on that occasion?

A He calls me up, tells me to meet him on --

MR. LAROSSA: Objection.

THE COURT: Just read back the last two questions.

(Record read)

THE COURT: Who called you up?

THE WITNESS: John Caruso.

THE COURT: John Caruso called you up?

THE WITNESS: Yes, your Honor.

THE COURT: Is that the point of the objection?

MR.LaROSSA: That is the point of the objection. I am trying to make a record with respect to conversations with others, your Honor, and I thought we were under

instruction to do so.

THE COURT: Yes. I just wasn't sure whether you had something specific in mind or whether this is the general objection.

MR. LaROSSA: My objection in this respect is based upon the Kotteakos doctrine.

THE COURT: I will sustain the objection.

MR. LaROSSA: I move to strike, may it please the Court, all of the testimony with respect to this individual John Caruso.

THE COURT: No, the motion is denied.

Q After you met John Caruso, did there come a time that you saw him again?

A Yes, sir.

Q Where did you see him?

A I saw him on 92nd Street and Second Avenue.

Q What happened when you met with him on that occasion?

A He tells me that he is going to --

MR. LaROSSA: Objection.

THE COURT: I will sustain that objection.

Q Did he give you anything on that occasion?

A In the mid-afternoon I met him at the Kor'vette Shopping Center in the Bronx. He gave me two suitcases

full of mix, told me, "Don't touch it, don't mix it in with my other stuff that I have home."

MR. LaROSSA: I object to this and move that it be stricken.

THE COURT: Motion denied. Objection overruled. Received subject to connection.

MRS. ROSNER: Your Honor, may the record reflect that I join Mr. LaRossa's objection and ask that the jury be instructed that acts and declarations of Mr. Caruso are not attributable to my client.

THE COURT: Proceed.

Q What did he give you on that occasion?

A He gave me two suitcases, tells me it's mannita. The one marked M is mannita. The one marked M with a line is milk sugar.

There was some other stuff that you mix coke with. I don't remember the name, the name of the mix.

He told me that was in a separate bag, and for me not to mix it with the mannita and milk sugar.

He gave me some test tubes, masks, gloves, plastic gloves, some sealer that you mix with a sealer bag, whatever you get them in the store. He gave me the plastic bags that go for it.

Q What did you do with the things he gave you?

A I brought it home, left it home.

Q Pardon?

A I brought it home and I left it in my apartment.

Q Did you have a conversation with Herbert Sperling after that?

A Next day I was over his home. I told him that John gave me all the stuff in the apartment, and I asked him -- I asked Herbie, "Herbie, could I mix everything together?" I said, "I have them in separate boxes. I will put everything altogether."

He says, "I don't see why not. It's one happy family."

Then he turned around and said, "Joe, don't do nothing yet until I ask Hooks."

So the next day I was on the avenue. I asked Sonny Gold, "Where's Herbie?" He tells me he is in the apartment.

Q What apartment is this?

A The same that we used to mix in, so there was a girl living there, and I didn't want to ask Herbie anything about the mix. It was Herbie, there was Leo, and Hooks was up the apartment.

Herbie gave Leo and Hooks some money. He tells me, "I am going to leave first. Follow me in five minutes."

THE COURT: Who said that?

THE WITNESS: Herbie.

A So Herbie goes on the elevator. I waited outside the elevator. Five minutes later I start going down. They are still in the corridor in the building.

I asked Herbie, "Did you speak to Hooks about me mixing the stuff together?" So he asked him if it was all right for me to mix the stuff with his stuff. Hooks says, "Why not?"

Herbie says, "Okay, Joe, do what you got to do."

I asked Herbie if it was all right for me to throw some stuff out that he had that we didn't need because I already had scales and the heat sealer, and he says, "Joe, I leave it up to your -- I leave it up to you."

So I went back home and I mixed everything together and threw some stuff out.

Q Did there come another occasion that you met with Herbert Sperling?

A I think it was about the beginning of April. He calls me up, tells me to come down to the avenue. I leave my home and go down to 54th Street, parked my car on Broadway, walk in one block.

I walked into the cigar store. There is Herbie, there is Leo, and there is Hooks.

Leo is saying, "I need the money to make the deal."

Herbie tells me, "Joe, listen, go to my house, go to my wife's closet, and there is a bag on the top shelf containing 40,000. You go up there and just take out 30,000 and bring it right down."

I leave 54th Street and Seventh Avenue, go back to Broadway, get my car, and I go back to -- I go to Bellmore.

I knock on the door. The maid, Mary, lets me in.

I asked her, "Did Herbie call you?" She says no.

So I told her I had to go to the bedroom. She didn't want me to go in the bedroom first because she said there was a lot of money there. I said, "It's all right. Herbie sent me to pick up some money."

MR. MITCHELL: I am going to object to all of this conversation.

THE COURT: Overruled.

A I go into Herbie's bedroom. I open his wife's closet door. I go on the top shelf, and there is a brown bag.

I open it up and there is four bundles. I take-- put it back on the bed, take a rubberband off one, and I count one bundle. It's the 10,000.

Q What kind of denominations were they?

A Hundreds. I put the rubberband back on the bundle. I ask Mary to go down, get me a paper bag --

MR. MITCHELL: Objection, your Honor.

THE COURT: Strike out what you asked Mary.

Q What did you do with the money?

A I put it in a brown paper bag and I left. I went back to 54th Street, parked the car on Broadway, walked in one block, I was carrying the bag on my side like it was a lunch bag. I walk into the cigar store. Leo told Herbie, "If the kid is going to start carrying money, make sure he puts it in his pocket or in the side of his pants so the public don't see."

Herbie says, "There is no reason for him to put it in his pocket." They were talking. I gave it to Herbie. He said, "Okay, Joe, go home."

Q Did there co me a time that you mixed with John Caruso?

A Yes.

Q Do you recall the first occasion?

A It was April 7th at the Bar Harbour.

Q What year was that, Mr. Conforti?

A '73.

Q I show you Government's Exhibit 19, which is a Bar Harbour Motel receipt, and ask you if that is your signature.

A Yes, sir.

Q What is the date of that registration receipt?

A April 7, '73.

Q Is that the occasion you are referring to now?

A Yes, sir.

Q I also ask you to look at the bottom of that guest registration receipt and tell me what room number it was?

A 46.

Q Would you please tell the court and jury what happened on the occasion that you were in the motel with John Caruso? Tell the court and jury what happened at that time.

A The night before John calls me up, says, "Joe, stay by the phone."

So next day I stood by the phone. In the morning Herbie calls up, tells me, "Joe, bring all the tools out," or equipment.

So I would bring all the testing equipment, mannite, about 20, 30 pounds of mannite, screens, all the testing equipment, anything I would need to testand mix heroin. So I would leave my house in the morning. From my house I go directly to the Bar Harbour, register, leave the stuff in the hotel room. I go to Herbie's house, I tell him where I am, tell him the room number. He tells me, "Joe, things are going to be -- it's going

to take a little time"; for me to go to a movie and to wait at the hotel.

So I leave Herbie's home, I wait in the hotel till about 8, 8:30.

John arrives. He has about 15 half kilos of pure heroin. Takes it out. He says, "I can't do nothing until Jack arrives."

About 20 minutes later Jack arrives.

Q Jack Spada?

A Yes, sir. And we start. And we start testing the heroin.

Q What kinds of tests did you do on that occasion?

A Mineral oil test and an acid test.

Q Please tell the court and jury how an acid test is conducted.

MRS. ROSNER: Your Honor, I am going to object to this as having been asked and answered on Monday.

MR. NESLAND: I believe I didn't ask how an acid test is conducted. I asked how a mineral oil test is conducted.

MRS. ROSNER: I will withdraw the objection, your Honor.

Q How is an acid test conducted?

A An acid test, you take an ash tray from the hotel and you go in each bag of the heroin, half kilo bag, you take a little bit out and you put it in the ash tray. Do that about maybe three to five bags and you lay them separate dimensions in the corner of the ash tray.

You take an eyedropper, you squeeze the acid out and you drop it on the heroin.

Then you see the heroin just rise, float on the acid, and you watch it. The dark -- for a test it has to be a dark olive-green. The darker it is the purer the heroin. The lighter it is, that means somebody fooled around with the heroin, it's not pure.

Q Where did you receive the acid?

A Excuse me?

Q Where had you gotten acid that you used for the test?

A Herbie's home.

Q After you tested the heroin on that occasion what did you do?

A After the test was complete John goes to the phone in the hotel, he's got to make a phone call to John Hooks. I said, "Stop, don't use the hotel phone."

So John and Jack are talking, so Jack says,

"I will call up Herbie, I will tell him how the test is and he will get in touch with Hooks."

Jack leaves the hotel, makes the call, comes back. He says, "Everything is okay, we got to do what we have to do." We mixed two and a half kilos of heroin.

Q How much did you end up with?

A About 14 half kilos of mixed heroin.

Q What did you do with the mixed heroin?

A I put about seven bags in one bag for John to deliver. I put seven bags in another brown paper bag for Jack to deliver. And put that in John's bag, put that small bag into a big bag and put the pure heroin underneath. John always took the pure heroin with him.

They both left the hotel. I stayed behind, cleaned up the hotel room, cleaned the material, everything back in the suitcase and I would leave, go home.

Q Did you have occasion to mix with John Caruso again?

A Few days later. I got a call in the evening. John tells me to stay by the phone. Next morning Herbie tells me to come on out with my material.

I go from my home and I register at the Gate-

way.

Q I show you Government's Exhibit 20 and ask you if that is your signature?

A Yes, sir.

Q Is that a guest registration receipt from the Gateway?

A Yes, sir.

Q What is the date of that?

A The 11th of April.

Q What room did you have on that occasion?

A Room 19.

Q Is this the occasion you are referring to how?

A Yes, sir.

Q What happened at that time?

A After I got the call from Herbie I go and register at the Gateway, register, leave the stuff in the room, and I go to Herbie's home, telling him -- I knock on the door, the wife lets me in. I ask where Herbie is. He is upstairs in the children's room.

I go into the room. There is Herbie and there is John Caruso looking at TV.

I tell Herbie -- I ask Herbie ask Joe to get the room. He says, "Yes." I give him the room number and the hotel.

John asks Herbie, he says, "Herbie, is Joe on the expense account?"

Herbie says, "Yes."

He says, "What do you need?"

John told me to get ywo flight bags.

So I left Herbie's home. I go and buy the two flight bags in Robin Hood. It's on Sunrise Highway and Merrick. I return to the hotel and I wait there.

Later on that evening, around 8, 8:30, John arrives with Jack. We do another test. We test, I think, two and a half pure heroin. We give it the acid test and the mineral oil test. Andwe -- and I mix. After the test was ginished I mixed two and a half kilos from the heroin that I tested a few days before and we mixed that. I put everything in the flight bags the way John told me.

They would leave. I stayed behind and cleaned up the mess, washed everything down. I would leave and go home.

Q Did John Caruso call you after that?

A A few days after that I get another call from John. Tells me to stick by the phone. Next day I wait, stay at home. I get a call from Herbie, but

before I get the call from Herbie John calls up and tells me, "Things don't look that good but just be ready." Herbie calls me up during the morning, he says, "Come on out?"

I says, "Everything all right?"

He says, "We don't know yet but just come on out."

So I leave my home. I didn't go and register in the hotel right away. I go right to Herbie's home and while I was driving there Herbie is talking to -- after I park my car and get out and Leo and Herbie are talking outside.

Leo is telling Herbie that "Things look good, we are going to have a good year, stuff been coming in."

So I tell Herbie, "Are we going to do anything?"

He says, "Yes."

So I turn around and say, "I will be right back." I go into my car. I leave. I was going to register in the hotel.

I go about two, three blocks. I see Leo's Lincoln behind me, waving me down. I stop. I get out of the car. Herbie gets out of the car. Herbie

asks me, "Did you get the hotel room?"

I says, "No, that is where I am going now," so we all laugh.

So Herbie gets back into the car. I get in mine. I go to the hotel.

Q Where did you register?

A The Bar Harbour.

Q I show you Government's Exhibit 21. Is that your signature there, you are Mr. Conforti?

A Yes, sir.

Q What is the date of that?

A 4/13/73.

Q What room did you have on that occasion?

A 38. It was upstairs, on the second floor.

Q What happened after you went to the hotel and registered?

A I registered at the hotel. I left my suitcase up in the hotel room. I leave and go back to Herbie's home, knock on the door. Herbie was gone.

I leave the message with the wife, telling her, "Make sure Herbie gets this information." I write on a piece of paper the hotel I am at and the room number and I leave. I return to the hotel and wait.

8:30, about 25 to 9, John shows up. I was

downstairs getting some coffee and some cake at that time. He says, "Joe, I got to call up Hooks. Wait outside. I will be right back."

I am waiting outside. He comes in, comes to meet me in about a couple of minutes. He says, "You go to the hotel room."

I go to the hotel room. He goes in the trunk of the car. It was another car he rented for Herbie. Goes in the trunk, takes a bag out, takes some clothes, puts on his back, make out like we are registering in the hotel. Get in the hotel room. We start to mix. Mix about two and a half kilos again. Wind up 12 to 14 half kilos.

We weigh the bags, we seal them, put them in brown paper bag. By the time we got finished was about maybe 11:30, quarter to -- almost it was a little going to 12.

He walks out of the hotel room. I am standing on the second floor. Puts the stuff in the trunk of the car. Puts the clothes on the hanger inside the hook in the car and he leaves.

I go back up to the hotel room. I clean up all the mess, wipe everything down, clean the screens and spoons I had, put everything back in the trunk, and

I go home.

Q What did you do with the equipment at that time?

A I couldn't put it in the basement of my home. I left it in the car because I got home late.

Q What happened after that?

A About two, two and a half hours later I got arrested.

MR. NESLAND: Your Honor, this might be a convenient place to recess. It's appropriate.

THE COURT: All right. We will take the midmorning recess at this time. The jury may go out.

(The jury left the courtroom.)

(Recess.)

(In open court; jury present.)

BY MR. NESLAND:

Q Just before the recess, Mr. Conforti, you testified that you were arrested. Was anything seized from you at the time you were arrested?

A Yes.

Q Where were you arrested?

A About a block away from my home.

Q Were youin a car?

A Yes.

Q Was anything seized from you?

A Yes, sir.

Q I show you what has been marked Government's Exhibit 22 for identification. Do you recognize Government's Exhibit 22 for identification?

A Yes, sir.

Q What is it?

A My green suitcase.

Q What did you use that for?

A I used that for putting--

MR. LA ROSSA: Objection.

THE COURT: Sustained.

A I used that for my --

THE COURT: Just a minute. You can't answer. The objection is as to the form.

Did you use that for anything?

THE WITNESS: Yes, sir.

THE COURT: What did you use it for?

THE WITNESS: For mixing and diluting heroin.

Q I show you what has been marked Government's Exhibit 23 for identification and ask you if you recognize that.

A Yes.

Q What is it?

A Ice cream scoop.

MR. LA ROSSA: I can't hear the witness. I am sorry.

THE COURT: Ice cream scoop.

Q Did you use this for anything?

A Yes.

Q What did you use Government's Exhibit 23 for identification for?

A Picking up to mix heroin. Putting it in the bags.

Q I show you what has been marked Government's Exhibit 24 for identification and ask you if you recognize that.

A Yes, sir.

Q Did you use Government's Exhibit 24 for identification for anything?

A Yes, sir.

Q What did you use Government's Exhibit 24 for identification for?

A Mixing the heroin.

Q How did you use Government's Exhibit 24 for identification?

A I put the mannite and heroin in the round one. You shake it until -- you shake it, mix it

about eight or nine times in the bottom scoop.

THE COURT: Mr.Conforti, I am sure that everybody can't hear you. You are speaking too softly. Just read that last answer, Mr. Birnbaum, please.

(Answer read.)

A The top one is for the last mix. You just screen the heroin in the fine screen so it makes it a better mix.

Q I show you what has been marked Government's Exhibit 25 for identification and ask you if you recognize it.

A Yes, sir.

Q What is it?

A It's a hot plate for the mineral oil test.

Q Did you use it for anything?

A For testing heroin.

Q What was its use?

A That's a hot plate that you put the Pyrex jar on with the mineral oil in it. That performs the mineral oil test.

Q I show you what has been marked Government's Exhibit 26 for identification and ask you if you recognize it?

A Yes, sir.

Q What is it?

A It's Herbie's scale.

Q Did you use Government's Exhibit 26 for identification for anything?

A Yes, sir.

Q What did you use it for?

A To weigh the half kilo 17-1/2 ounces.

Q On the scale?

A Yes.

MR. NESLAND: Can I havethis marked Government's Exhibit 26A for identification.

(Government's Exhibit 26A was marked for identification.)

Q Government's Exhibit 26A for identification, that's the scale, is that right?

A Yes, sir.

Q I show you what has been marked Government's Exhibit 27 for identification and ask you if you recognize it.

A Yes, sir.

Q Did you use government's Exhibit 27 for identification for anything?

A I didn't. That was John Caruso's mask.

Q What was it usedfor, if you know?

A The fumes from the heroin, he would put it over his face to protect him from breathing the fumes in.

Q I show you Government's Exhibit 28 for identification.

A That's another mask.

Q The same kind as Government's Exhibi5 27 for iden-

tification?

A Yes.

Q I show you what has been marked Government's Exhibit 29 for identification and ask you if you recognize it?

A Yes, sir. That's the mineral oil I used for the mineral oil test to test heroin.

Q I show you what has been marked Government's Exhibit 30 for identification and ask you if you recognize it.

A Yes, sir.

Q What is it?

A It's the thermometer that I used to test the heroin.

Q That's the thermometer you are talking about in Government's Exhibit 30 for identification?

A Yes, sir.

Q I show you what's been marked Government's Exhibit 54A for identification and ask you to look at it.

A That's -- we get a whole bunch of thermometers --

MRS. ROSNER: I object, your Honor. Not responsive to any question.

THE COURT: Yes, strike it out. Read the

question to him, please.

(Question read.)

THE COURT: He just asked you to look at it.

A Those are the same thermometers I used for testing heroin.

MRS. ROSNER: I object, your Honor. Same objection. Move to strike again.

THE COURT: Motion is granted.

You haven't answered the question yet because the question hasn't been put. The lawyer said look at it. Now wait for his question.

What's the question?

BY MR. NESLAND:

Q I show you this Government's Exhibit 30 for identification. I ask you to look at it.

THE COURT: Just look at it.

A Yes, sir.

Q Do you notice the C?

A Yes, sir.

Q What does that mean, if you know?

A Centigrade.

Q I ask you to look at Government's Exhibit 54 for identification. Does it have a C?

MRS. ROSNER: I object, your Honor, because the item is not in evidence.

THE COURT: It may be identified. Objection is overruled.

Does that have -- what is that device?

THE WITNESS: It's a thermometer.

THE COURT: What do you call it?

THE WITNESS: A thermometer.

THE COURT: Is it a Centigrade thermometer or isn't it?

THE WITNESS: Yes, sir.

Fahrenheit.

THE COURT: Fahrenheit thermometer?

THE WITNESS: Yes, your Honor.

BY MR. NESLAND:

Q To your recollection, did you ever have occasion to use a Fahrenheit thermometer?

MRS. ROSNER: Objection, your Honor. Relevance.

THE COURT: Well, I don't see what the importance is at the moment. I will sustain the objection.

MR. NESLAND: This is a Centigrade thermometer, your Honor.

MRS. ROSNER: I object to any comments by the prosecutor, your Honor.

Q I show you what's been marked Government's Exhibit 31 for identification and ask you if you recognize these?

A Yes, sir.

Q What are they?

A Plastic bags.

Q Did you use these for anything?

A Yes, sir. Put the heroin in after we mix it.

Q I show you Government's Exhibit 32 for identification and ask you if you recognize it?

A Yes.

Q What is it?

A It's a Right Guard spray deodorant.

Q Did you have any use for it?

A Yes.

Q What did you use it for?

A For spraying the hotel before I leave because it left an odor in the room, so I sprayed the hotel.

Q What left an odor?

A The heroin.

Q I show you what's been marked Government's

Exhibit 33A for identification and ask you if you recognize it.

A Yes, sir.

MR. NESLAND: Can I have this marked Government's Exhibit 33A for identification.

(Government's Exhibit 33A was marked for identification.)

Q I show you Government's Exhibit 33A for identification and ask you if you recognize it.

A Yes, sir.

Q What is it?

A It's a heat sealer.

Q Did you have a use for it?

A Yes, sir.

Q What did you use it for?

A After the heroin was in the plastic bags, when it contained 17-1/2 ounces, the way to seal the bags is through the heat sealer. Take a bag, the plastic bag, between the heater, seal the bag.

Q I show you what has been marked Government's Exhibit 34 for identification and ask you if you recognize it.

A Yes, sir.

Q What is it?

A Eyedroppers and a foam pad that goes in the mask.

Q Did you have any use for it, what has been marked Government's Exhibit 34 for identification, the eyedroppers?

A Yes, sir.

Q What did you use it for?

A That's when you use it for the acid test.

Q How did you use that?

A You squeeze it and dip it in the acid tube and you put it in the ash tray.

Q I show you what has been marked Government's Exhibit 36 for identification and ask you if you recognize it.

A Plastic gloves.

Q Did you have a use for these plastic gloves?

A No, sir.

Q Pardon?

A No, sir.

Q Was there any use for them?

A Yes.

Q What was the use?

MR. MITCHELL: Objection, your Honor. He stated he had no use for them. It's just a surmise

or guess what the use is.

Q Did you ever see these used?

A Yes.

Q What did you see them used for?

A Put the gloves on when you mix heroin.

Q Who put the gloves on?

A John Caruso.

Q I also show you what has been marked Government's Exhibit 35 for identification and ask if you recognize them.

A Also the eyedroppers.

Q I show you what has been marked Government's Exhibit 37 for identification and ask you if you recognize it.

A Spoon.

Q Did you have any use for this spoon?

A Yes, sir.

Q What did you use it for?

A To mix heroin, to handle it and put it in the plastic bags.

Q I show you what has been marked Government's Exhibit 38 for identification and ask if you recognize it.

A Yes, sir.

Q What is it?

A Test tubes.

MR. NESLAND: May I have this marked Government's Exhibit 38A for identification.

(Government's Exhibit 38A marked for identification.)

xx THE COURT: I have Court's Exhibit 12 is filed.

BY MR. NESLAND:

Q What is Government's Exhibit 38A for identification?

A A test tube.

Q Did you have a use for it?

A Yes, sir.

Q What was its use?

A You test heroin. You put the heroin in the tube and place it in the cardboard, through a cardboard hole, put the mineral oil in.

Q I show you Government's Exhibit 40 for identification and ask you if you recognize it.

A Yes.

Q What is it?

A A piece of cardboard, three holes in it.

Q Did you have a use for it?

A Yes, sir.

Q What did you use it for?

A That goes on the Pyrex. The two test tubes go on both ends and the middle hole is for the thermometer.

Q I show you Government's Exhibit 39 for identification and ask if you recognize it?

A Yes.

Q What is it?

A It's a handle for the Pyrex.

Q Did you have a use for it?

A Yes.

Q What did you use it for?

A To put the mineral oil in it.

Q A Pyrex went in here, a dish?

A Yes.

Q What did you do with Government's Exhibit 49 for identification?

A It's a cover that you put over.

Q On top of it?

A Yes.

Q Like that?

A Yes.

Q So what did you do with Government's Exhibit

38 for identification?

A Put it on the right or left side, the larger holes. Put the test tube in the cardboard.

Q You are referring to Government's Exhibit 30 for identification?

A Yes, that goes in the center.

Q Went into the center?

A Yes.

Q What did you do once this was complete?

A You put it on the hot-table.

Q Are you referring to Government's Exhibit 25 for identification?

A Yes, sir.

Q What did you do then?

A I plug it in and put it on low. The mineral oil started getting hot. That's used for the temperature that you test heroin with.

MR. NESLAND: At this time, your Honor, the government would offer Government's Exhibits 22 through 40 for identification.

MR. MITCHELL: Objection, your Honor.

MR. PELUSO: Objection.

MR. DUKE: Objection.

THE COURT: What was the Fahrenheit item?

MR. NESLAND: Government's Exhibit 54, your Honor. The government does not offer that at this time.

THE COURT: These are all received over objection subject to connection. The exhibits are being marked in evidence.

(Government's Exhibits 22 through 40 were received in evidence.)

BY MR.NESLAND:

Q I show you Government's Exhibit 41 for identification and ask you if you recognize it.

A Yes.

Q What is it?

A A yellow bag.

Q The yellow bag marked Government's Exhibit 41A for identification?

A Yes, sir.

Q What is Government's Exhibit 41A for identification?

A It's mannite, milk sugar, to dilute and mix heroin.

Q Was Government's Exhibit 41A for identification in your car?

A Yes, sir.

Q I show you --

THE COURT: In your car at the time of its seiaure, is that right?

THE WITNESS: Yes.

THE COURT: At the time you were arrested?

THE WITNESS: Yes, sir.

BY MR. NESLAND:

Q Was there anything else in your car besides what --

A About 10 to 15 bags of milk sugar in clear plastic bags marked M on it.

Q I show you what have been marked Government's Exhibit 44B for identification, white plastic bag.

A Yes.

Q And Government's Exhibit 46B for identification and ask you if those appear to be the kinds of bags you referred to.

A Yes, sir.

Q What was in the bags?

MRS. ROSNER: I object to the form of the question, your Honor: "appear to be." Move to strike.

THE COURT: You are a little late.

Are those the bags that were in your car at the time?

THE WITNESS: Yes, your Honor.

THE COURT: What was the last question that you asked? What was that last question the counsel asked?

(Question read.)

THE COURT: What is that substance in the bags?

THE WITNESS: Mannite or milk sugar.

Q I show you what has been marked Government's Exhibit 43B for identification. Do you recognize it?

A Yes.

Q What is it?

A Mannite.

Q I show you what has been marked Government's Exhibit 44B for identification. Do you recognize it?

A Yes.

Q What is it?

A Mannite or milk sugar to cut heroin.

Q I show you what has been marked Government's Exhibit 45B for identification. Do you recognize it?

A Yes.

Q What is it?

A Mannite or milk sugar.

Q I show you Government's Exhibit 46B for identification and ask you if you recognize it?

A Yes.

Q What is it?

A Mannite or milk sugar to dilute heroin.

Q I show you what has been marked Government's Exhibit 47B for identification and askyou if you recognize it?

A Yes.

Q What is it?

A Mannite or milk sugar to dilute heroin.

Q I show you what has been marked Government's Exhibit 48B for identification and ask if you recognize it.

A Yes, sir.

Q What is it?

A Mannite or milk sugar to dilute heroin.

Q I show you what has been marked Government's Exhibit 49B for identification and ask you if you recognize it.

A Yes, sir.

Q What is it?

A Mannite or milk sugar to dilute heroin.

Q I show you Government's Exhibit 50B for iden-

tification and ask you if you recognize it.

A Yes.

Q What is it?

A Mannite or milk sugar to dilute heroin.

Q I show you what has been marked Government's Exhibit 51B for identification and ask you if you recognize it?

A Yes, sir.

Q What is it?

A Mannite or milk sugar to dilute heroin.

Q I also show you Government's Exhibit 52B for identification. Do you recognize it?

A Yes, sir.

Q What is it?

A Mannite or milk sugar to dilute heroin.

Q I also ask you to look at Government's Exhibit 53B for identification and ask you if you recognize it.

A Yes, sir.

Q What is it?

A Mannite or milk sugar to dilute heroin.

MR. NESLAND: At this time, your Honor, the government offers Exhibits 41 through 53B for identification -- 41A through 53B for identification.

THE COURT: Were those items in your car

at the time you were arrested?

THE WITNESS: Yes, your Honor.

MR. MITCHELL: Objection.

MR. DUKE: Objection.

MR. LA ROSSA: Objection.

MRS. ROSNER: May I see 43B, your Honor?

THE COURT: Surely.

MRS. ROSNER: Your Honor, apart from the objection for the lack of connection I would object on the ground there are certain writings on the exhibits which are not appropriately admitted into evidence.

THE COURT: The writings are being excluded. The exhibits are received in evidence subject to connection and are being marked accordingly.

(Government's Exhibits 41A through 53B were received in evidence.)

Q Mr. Conforti, you testified to meeting Louis Mileto on February 10, 1973. Do you recall testifying to that?

A Yes.

Q What kind of car was Louis Mileto driving on that occasion?

A It was a leased Buick Skylark. It was a mustard-type color. It was a two-door hardtop.

Q Tell the Court and writer what terms that you used to describe heroin?

MR. LA ROSSA: Objection.

THE COURT: Did you have a -- the objection is sustained. Did you have any words that you used when you referred to heroin oth-r than the word heroin?

THE WITNESS: Yes, your Honor.

THE COURT: What words did you have?

MR. LA ROSSA: Objection.

THE COURT: Overruled.

THE WITNESS: Goods.

THE COURT: Goods?

THE WITNESS: Yes, sir.

THE COURT: Anything else?

THE WITNESS: Package.

THE COURT: Package?

THE WITNESS: Yes.

THE COURT: Yes?

THE WITNESS: Stuff.

THE COURT: Yes?

THE WITNESS: That's it.

THE COURT: Is that what you recall at the present time?

THE WITNESS: Yes, your Honor.

MR. NESLAND: That is all the government has at this time, your Honor.

THE COURT: Mr. La Rossa, you may start cross examination.

Just a minute, I have Court Exhibit 13.

Motion denied.

MR. LA ROSSA: May I approach the prosecutor for a moment to save time?

THE COURT: Certainly. You may even talk to him if you want to.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Conforti, my name is La Rossa. I represent Benjamin Mallah.

What was the date of your arrest?

A I think it was April 14, 1973.

Q When was the first time, sir, that you had a conversation with any agent or Assistant United States Attorney about any of the events that you described here?

A It was right after, the day after I was arrested.

Q The very next day?

A The same night.

Q Who was that agent or Assistant United States Attorney?

A It was Mr. Velie.

Q Anyone else?

A Harvey Turek.

Q Anybody else?

A It was a few other agents. I don't remember now.

Q On that first night, sir, did they ask you questions?

A Yes, sir.

Q Did you give them answers?

A At first no and then I gave them some.

Q When did you begin to give them answers?

A That night.

Q Were the answers truthful?

A Yes, sir.

Q From that night, the very first time you met Mr. Levy and the agents, how many times have you met with either agent or an Assistant United States Attorney until today?

A After that night I went to Bergen County Jail.

Q I don't think you understand my question.

THE COURT: He wants to know, can you count up in your mind and then give an answer to the question the number of times that you recall having met and talked with --

MR. LA ROSSA: Any agent or Assistant United States Attorney.

THE COURT: Both agents and Assistant United States Attorneys.

A A lot of times. I can't put a number on it.

Q Many, many times, Mr. Conforti?

A Yes, sir.

Q On those occasions were you asked questions?

A Yes, sir.

Q Did you give answers?

A Yes, sir.

Q Were you asked to give in as complete a detail as you could about everything that was asked of you?

A I don't understand that question.

Q Were you asked to be truthful?

A Yes.

Q Were you asked to be as completely accurate as you possibly could?

A Yes.

Q When was the last time you saw what has been marked as Exhibit 22 for identification, this green valise sitting here?

A On the last trial.

Q When was that?

A It was last month.

Q You didn't touch any of the items in this bag, did you, sir?

A No, sir.

Q You won't touch them, will you?

A No, sir.

Q As a matter of fact, you have told the Assistant United States Attorneys before you came in here today that you wouldn't touch those items, isn't that right?

A Yes, sir.

Q Tell us why, sir, you will not touch any of the items in that bag?

MRS. ROSNER: Your Honor, may we approach the side bar?

THE COURT: No, send up a note and let me know what you have in mind.

MRS. ROSNER: Maybe I can confer with counsel for a moment.

MRS. ROSNER: I withdraw my objection, your Honor.

Q Why don't you touch those items?

A I made an oath on my family I will never touch anything to deal with heroin again.

Q Was that some time after you began talking to the agents?

A It was right after my first visit from my wife in West Street.

Q Sir, since then, am I correct in stating that you have never touched any item that would have anything to do with narcotics?

A I never touched anything.

Q Am I also correct, sir, that from that point on you began receiving money from the United States Government?

A Yes, sir.

Q And you have received that money right up until today; haven't you, Mr. Conforti?

A Every month, yes, sir.

Q And in addition to receiving a stated sum of money, how much was that money, by the way, the stated sum?

A I get 585 a month.

Q In addition to that, is your rent paid?

A Yes, sir.

Q In addition to that, are food bills paid?

A No, sir. I pay it out of the money they give me.

Q How many times in the last 90 days, sir, have you been in this building -- withdraw the question, may it please the Court.

How many times in the last 90 days have you talked to either of the Assistant United States Attorneys who are trying this case?

A About four, five times. Maybe six.

Q By the way, there came a time when you agreed to testify, did there not?

A I had no alternative, yes.

Q You agreed, did you not?

A Yes.

Q Didn't you -- in any of those agreements with any of the Assistant United States Attorneys, did you agree

that you would uphold the law from that point on?

A To my best knowledge, yes.

Q You promised then you would never do anything wrong during this period, is that right?

A I don't understand that question.

Q When you agreed to become a government witness, Mr. Conforti, didn't you promise the Assistant United States Attorneys or the agents that you would commit no other crimes?

A Yes.

Q No question about that, is there?

A No.

Q And have you committed any crimes since the day of your arrest until today?

A No, sir.

Q You have talked about Herbert Sperling. When was the last time that you spoke to Mr. Sperling?

A When I got out of West Street.

Q I beg your pardon?

A When I got out of West Street.

Q What day?

A I don't remember.

Q What month?

A I think it was in June.

Q What year?

A '73.

Q This year?

A Yes, sir.

Q And outside of seeing him in a courtroom, Mr. Sperling, am I correct that you never saw or spoke to him since that day?

A Yes, sir.

Q You talked about Sonny Gold?

A Yes, sir.

Q When is the last time you saw or spoke to Sonny Gold outside of a courtroom?

A The last day -- when I made bail.

Q When was that?

A Could be April or June. I don't remember the month.

Q April or June of 1973?

A It was right after I got out of West Street, yes.

Q You talked about a John Caruso.

A Yes,sir.

Q When is the last time you saw or spoke to John Caruso outside of a courtroom?

A April 13th. I was in a hotel room.

Q You spoke about a Leo Barino, did you not?

A Yes.

Q When is the last time you spoke to or saw Mr. Barino outside of a courtroom?

A West Street.

Q John Capra, when was the last time you saw or spoke to Mr. Capra outside of a courtroom?

A When I was in West Street.

Q Sam Kaplan, when is the last time you saw or spoke to Mr. Sam Kaplan?

A On my trial and West Street.

Q During the period, sir, from -- I assume that would refer to any name that you have mentioned here on testimony, is that right? That you have not seen nor spoke to them outside of seeing them in a courtroom on any occasion after you left West Street?

A I haven't spoke to them.

Q Is that right?

A Seen them, no.

Q Or spoke to them.

Mr. Conforti, in all the conversations you had with agents, in all the conversations that you have had with Assistant United States Attorneys, you never mentioned Ben Mallah, did you?

A I think I did, yes.

Q You did? When?

May I withdraw that question, please.

Did you mention Mr. Mallah's name to any agent or Assistant?

A Yes.

Q Prior to September 1, 1973?

A I think it was earlier.

Q You think it was earlier.

A When I had the first trial.

Q Mr. Conforti, are you telling us that you told an agent everything about Ben Mallah that you told us here in the courtroom about Ben Mallah?

MR. LAVIN: I object to the form of the question.

THE COURT: Sustained.

Q When you spoke to an agent, who was it?

A I didn't speak to no agent.

Q Who was it?

MR. LAVIN: I object to the form of the question. I think it is confusing.

THE COURT: I frankly am at a loss to know what the connection is myself, Mr. La Rossa.

Q Who did you speak to employed by the government on any occasion that you mentioned the name Benjamin Mallah?

A At the first trial I was asked about Ben Mallah.

Q I am not asking you about a trial, sir. I am asking you about conversations you had with any agent or Assistant United States Attorney, when was the first time you mentioned the name Benjamin Mallah?

A I think it was in June.

Q June?

A Yes.

Q Who did you mention it to?

A I think it was Jerry Feffer.

Q Is that an Assistant United States Attorney, do you know?

A Yes.

Q Who else?

A And Mr. Lavin.

Q Those are the only two that you discussed him with?

A There could have been more. There could have been agents in the room, I don't remember.

Q June was the first time you mentioned that?

A That is right.

Q When did they begin the interrogation of you?

MR. LAVIN: I object.

Q When did they begin asking you questions and you began giving them answers?

MR. LAVIN: I object to the form of the question.

THE COURT: I guess Mr. Lavin wants to know did they begin asking you questions at some time as a preliminary.

Q There came a time when you started to answer questions that were asked to you by either Assistant United States Attorneys or agents, isn't that right?

A Yes.

Q When was the first time that an agent or an Assistant United States Attorney asked you any questions about any of the details you have testified to in this case?

A Right after I made mail.

Q When was that?

A I don't remember the date.

Q Do you remember the month?

A Not to be exact.

Q Mr. Conforti, would you add some testify with respect to someone if you were paid money for it?

A No, sir.

Q Would you leave any testimony out --

A Yes, sir.

Q -- with respect to someone if you were paid for it?

A If I forget it is something else but I would

never do that.

Q Besides an honest error, you wouldn't accept money to leave testimony out on anyone of these individuals, would you?

A No.

Q Or anyone? Right?

A Yes.

Q Is that true?

A I wouldn't take money, no.

Q From anybody?

A No, sir.

Q Did you speak to Sam Kaplan on October 28th of this year, Mr. Conforti?

A I think so.

Q Is there any question in your mind about that?

A I don't know about the month but I know I spoke to Sam Kaplan.

Q When I asked you before whether you had spoken to Mr. Kaplan from the date of your release from West Street until today, you lied, didn't you?

A I haven't seen the man, no.

Q Did you speak to him on the phone?

A Yes.

Q Did you tell him that for $10,000, he could be

left out of this case?

A No, sir.

Q You didn't say that?

A No, sir.

MR. LA ROSSA: Mark this, please.

(Defendants' Exhibit P was marked for identification.)

Q Did you call Mr. Kaplan from a public telephone?

A Yes, sir.

Q Some place out of New York?

A Yes, sir.

Q Did you deposit coins in that public phone to place the call?

A Yes, sir.

Q Was your purpose to make arrangements for Mr. Kaplan to pay some money?

A No, sir. I was told to call Mr. Kaplan.

Q I show you Defendants' P and ask you to read the first few pages and tell us whether that refreshes your recollection on whether or not you asked Mr. Kaplan on October the 28th for $10,000?

A I would not read it but I will explain it.

Q Read it, please.

A No, sir.

MR. LA ROSSA: May it please the Court, I ask the Court to direct the witness to read Defendants' Exhibit P.

MR. LAVIN: I think he is willing to answer the question if counsel will let him. He hasn't indicated his recollection is exhausted.

THE COURT: The government has a valid objection. They say that you haven't canvassed his recollection and he can read it if he needs it to refresh his recollection. You can ask him questions directly.

Q Tell us, Mr. Conforti, what was that call all about?

THE WITNESS: Can I explain?

THE COURT: Yes.

MR. MITCHELL: Your Honor, will you ask him to speak loud.

A On Herbert Sperling's case, I saw Jack Spada. I called him up, told him to give himself up. When I was working for Herbert I made a delivery, Sam Kaplan had an operation on his stomach, I think I delivered a kilo and a half of heroin with Jack. Jack told me to contact Sammy and for $10,000 he would keep his mouth shut because he knew I didn't testify about Herbie on Sperling's case and that if -- tell Sammy that -- if I don't get in touch with him, he knows that I am a government witness and that if

he spoke, naturally, the government would speak to me and I would tell them that I have delivered a kilo and a half of heroin with Jack at his hospital bed. There was two cousins of his that lived in Brooklyn that were there when I made the delivery. Jack was waiting on the level in other words, he was with me when I made the delivery. So Jack says, if you don't contact him, he is going to tell the government, be with the government and when he tells the government, then they will tell me, Joe, did you make the delivery to Sammy Kaplan. Naturally, I will tell them yes. So he told me to call up Sam Kaplan, tell him he wanted $10,000 to keep his mouth shut.

THE COURT: He being who?

THE WITNESS: Jack Spada told me to call Sammy.

THE COURT: Jack Spada wanted $10,000 to keep his mouth shut?

THE WITNESS: Yes, because he was with me when I made a delivery to Kaplan. So I agree with Jack, I will call him up and speak to him and he told me not to mention his name. I contacted Sammy. I told him there is a guy there that was with me when I delivered the gift, I told him on the phone. Sammy knew what I delivered him.

I told him that -- when I got on the phone Sammy tried to bring up that Louis' brother was there which he was not there in the hospital. Louis' brother was already in California.

So I told Sammy, I says, "Sammy, there is a man -- because the guy that was with me that's going to testify that I was with -- when I gave him the gift," and that he wanted 10,000 to keep his mouth shut, so Sammy tried to pull in between. He asked me that if I had the tape on the phone. I says no.

He says, "Youknow I am being framed," which he wasn't being frames. It was true.

MR. LA ROSSA: Objection. I move that be stricken. He is now not relating the conversation.

THE COURT: Stick to the conversation.

A Sammy says, "Joe, I am being framed again."

I says, "No, you are not." Because he knew that I made the delivery for Harby at Sammy Kaplan.

MR. LA ROSSA: Objection, move that be stricken.

THE COURT: Strike out what he knew. Just continue with the conversation.

A So the point was that I was to contact Sammy, which I did, and I contacted Jack. I says, "Jack, he ain't got the money which is true. He is not working."

I told him that "He just got out of West Street with us, and there is no reason for, you know, for you to try to get money," and Jack told me, " Well, I am going to try to get money from a lot of other people that I made deliveries for Herbie."

I said, "Whatever you do it is -- you know -- it is your thing."

But the main thing is if you brought my name to the government I would have sat down I would have told them that I made delivery to Sammy Kaplan, at his bed; when he had the operation on his stomach. I gave him a kilo and a half of heroin.

Q Are you finished?

A That's the general --

Q When was that?

A It was right after the Sperling case.

Q Wasn't it October 28th of this year, two months ago?

A It could have been, yes, if it is in October, it is October. I don't remember the exact month. I know I called up Sammy Kaplan.

Q Did you tell Mr. Lavin that you were trying to get $10,000 for somebody?

A I didn't try to get no 10,000.

Q Didn't you ask him for the 10,000?

A Jack told me to tell him just to get the 10,000 and that I would remain with Jack if I -- if he was willing to pay the 10,000, Jack will give me a box number, a box number and an address and a phony name, that he used, Getty I think it was, and that once Sammy got the money I was supposed to contact Spada, and tell him and then Jack would tell me the address. I would tell Sammy Kaplan.

I would never see the money, that I was just supposed to -- I was a messenger boy between Jack Spada and Sammy Kaplan.

Q When you made that phone call, Mr. Conforti, did you tell Mr. Lavin about it?

A No, sir.

Q Did you tell any agents?

A No, sir.

Q Did you tell any Assistant United States Attorney?

A No, sir.

Q Did you know that that was an extortion?

MR. LAVIN: Objection, your Honor. That is a legal conclusion.

THE COURT: Sustained.

Q Did you know it was a crime to make that call?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you think you were violating the law when you made that call?

A No, sir.

Q You didn't?

A Because I already helped Sammy. I didn't testify on Sammy on the Sparling case, and he knew it, and I knew it.

Q You mean as you sit there now, sir, you do not think that it violates the law for one man to pay another man money not to implicate him in a case?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q You didn't think you were violating the law when you made that call?

A I was thinking I was helping Sammy Kaplan, that's all that came to my mind, because I was under the protective custody and I couldn't do anything anyway. The only thing I coulddo was get to a phone. And that's why I did it.

Q That is not the first call you made to Sam Kaplan though?

A I tried to reach him through his -- through a friend of his.

Q And the first phone call you said $20,000, didn't you, Mr. Conforti?

A I think yes.

Q Didn'tyou?

A Yes.

Q But Jack Spada only told you 10,000, didn't he?

A Well, when he mentioned 20 I told him the man just came out of West Street, he's got nothing, he is trying to work; so he says "Oh, then make it 10."

Q Mr. Spada?

A Yes, sir.

Q On the very first time you spoke to him?

A Yes.

Q Then why did you call Mr. Kaplan and ask for 20?

A I didn't ask for 20. I says he is asking for 20. And I talked him down to a lower figure.

And then when I spoke to Jack I said, "Jack, even 10 is too much for him," he said we will see whatever you can get from him but make sure I want some money and I will give you an address where he can mail it.

Q Did you tell Sam Kaplan on the phone that you'd throw $2,000 in yourself toward the ten?

A I had 2,000 in my pocket to help him out. The main thing.

Q Did you tell him you'd throw that in as part of the ten?

A I think so. I told him I had $2,000 "I will help you." That's the main thing I was trying to help the man.

Q To pay Spada?

A Yes, sir.

Q So that Spada wouldn't testify to what you say now is the truth?

A It's the God's honest truth.

Q Is that right?

A Yes. I tried to help because I helped the man. I didn't say anything on the Sperling case. So Jack would have mentioned it, then I would have -- then the Court would know that I didn't keep my mouth shut from Sammy Kaplan since the beginning.

Q And you don't think there is anything wrong in doing that?

A I was just helping the man, trying to help. That's the main thing that came to my mind.

Q You don't think there was anything wrong in it?

A No, sir.

Q You didn't think that you violated the agreement you made with the Assistant United States Attorney not to violate the law when you made that call?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Where did you see Jack Spada?

A On the trial I saw him through a window.

Q Through a window?

A Yes, sir.

Q Where?

A Right in front of the courtroom.

Q You mean this conversation you had with Mr. Spada was through a window?

A I saw him through a window.

Q When did you have the conversation with Mr. Spada about Sam Kaplan?

A I called Jack up.

Q When?

A To tell him that I saw him.

Q When?

A Gee, I don't remember. It was right after the Sperling -- during the Sperling case when I saw him. He was down in the cab. Somebody spoke to him. He got -- hopped back in the cab and took off.

And I called him up.

Q Where?

A It was a Harlem number I had.

Q That you had?

A Yes.

Q Wasn't Jack Spada a fugitive then?

A Yes, sir.

Q Did you give Mr. Lavin or any of the agents the number of Jack Spada when he was a fugitive?

A No, sir.

Q Even though you had it?

A Yes, sir.

Q Did you know they were looking for him?

A I even told Jack, yes.

Q So you warned Jack that they were looking for him?

A I told him to come in because he is in trouble.

I says, "Come in and face everything and lay everything on the line. It will be easier for you," and that's when he started coming up with the money deal.

But I called him up to tell him that, "I told Mr. Lavin and Mr. Feffer that I spotted you, and for you to come in on your own, to make it easier on yourself."

And Jack was mainly afraid because of what he knew.

Q You didn't tell anybody about that until today when you just told us on the stand?

A I saw Jack,I told Mr. Lavin that I seen him.

Q Did you tell him that you called him?

A No.

Q Did you tell him his number in Harlem?

A No, sir.

Q This is while you were in protective custody and being paid by the government, am I right?

A Yes.

MR. LAVIN: Objection to the form of the question, "paid".

THE COURT: Overruled.

Q Did Sam Kaplan tell you "If I don't pay the money, I get framed", and you said, "Right, that's the way it is"?

A That's what Jack told me and I told -- see when Sammy asked me "Joe, you are on tape," I knew he had a tape on the phone anyway because I heard the noise in the tape and that's all the people saying in West Street "I was framed, I was framed." That's the biggest thing. And I knew --

MR. LA ROSSA: I object and move that be stricken.

THE COURT: All right. Strike it out.

A So I knew, I knew he had a tape on me.

THE COURT: These questions you know leave a lot of latitude, Mr. La Rossa, and I suggest you be more

specific.

MR. LA ROSSA: I thought s asked him a more specific question. I am sorry. Let me try it again, may I?

Did you in response to Mr. Kaplan, did Mr. Kaplan say to you on the phone, "If I don't pay the money, I get framed?" Did you say, "That is right, that's the way it is?"

A I think so. I am not sure but --

Q Did you say it?

A I don't remember word for word but I think that's about it. I'm not sure but the way it came out maybe that is the way it is, because Jack didn't want -- didn't want to know nothing except the 10,000. And I got him for 20 down to 10.

MR. LA ROSSA: I object and move that be stricken. It is not responsive to the question.

THE COURT: Just stop and wait for another question.

Q Did you tell Mr. Kaplan on the phone that you had to testify in three or more cases for the government?

A I don't know. I told him that I got to go on some more cases.

Q Did you tell him that if you don't get up and tell

your story real good they are going to give you a ton of years?

A I don't understand that.

Q You don't understand me?

MR. LAVIN: Objection to the comment.

MR. LA ROSSA: He said, "I don't understand." I am asking him --

MR. LAVIN: Rephrase the question.

THE COURT: But he is objecting to your comment and that is a valid objection. It was inadvertent and I overlook it.

MR. LA ROSSA: I am sorry. I just was asking the question.

Q Did you not understand the question sir? Let me try it again.

Did you tell Mr. Kaplan on that phone call that you had to testify in three or four more cases, and if you don't look good in the courtroom they are going to give you a lot of years?

A I didn't say that.

Q Nothing like that?

A Maybe -- I don't remember but I don't think I said it that way.

Q Tell us how you said it.

A I told him I had to testify, I mean the government, being I am in protective custody and the government wants to make me testify, that I knew the people I been talking about, I would have to testify. I had no way out, unless they pulled the bail and I go back to jail.

MR. LA ROSSA: May this be marked, please?

(Defendant's Exhibit Q marked for identification.)

THE COURT: Are you going to a new subject now, Mr. La Rossa?

MR. LA ROSSA: I am writing a note to you because I think that is the best thing to do, to tell

you what I am planning to do and see if you approve it.

THE COURT: We are close to the lunch hour. Do you want to pick it up after recess, or do you want to continue? You have the option.

MR. LA ROSSA: I think it would make sense for us to recess and then if your Honor would hear my legal application --

THE COURT: If you want a recess that is all right. We will take it now.

The jury is excused until 2 o'clock. You may go out.

(The jury left the courtroom.)

THE COURT: Yes, Mr. LaRossa?

MR. LA ROSSA: I would now like to have the witness here, what's been marked as Q for identification, and seek an identification of his voice. I thought that best be done outside the presence of the jury and that's what I was about to write in a note.

THE COURT: Well, I think what I would like to have is, and you can submit it to me beefore 2 o'clock, say a quarter of 2, some authority which entitles you to contradict anything that the witness has said on this subject, bearing in mind the rules of cross examination.

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MR. LA ROSSA: If I may, I will give you the cases right now.

THE COURT: Fine. I will look them up.

MR. LA ROSSA: United States vs. Haggett, 438 F. 2d 396, 1971, Second Circuit.

In addition to that I refer your Honor to Masino, 275 F. 2d 129; United States v.Alper, 156 F. 2d 222.

Ellico vs. United States, 19 F. 2d 232.

Alford vs. United States, 282 U.S. 1931.

THE COURT: What do you say those cases hold?

MR. LA ROSSA: I say these cases hold that this can be submitted to the jury on the following grounds --

THE COURT: What can be submitted to the jury?

MR. LA ROSSA: The tape. One, on the fact that they are prior inconsistent statements to what the witness states now.

Two, on the issue of motive and bias.

THE COURT: Bias against whom?

MR. LA ROSSA: Motive and bias in favor of any particular individual, your Honor. And in Haggett, Haggett refers to Judge Medina's decision in United States

vs. Lester cited at 248 F. 2d 329, at 334 which speaks to the issue of the fact that this might be a collateral matter, although it says:

"Although a party may not cross examine a witness on collateral matters in order to show that he is generally unworthy of belief and may not introduce extrinsic evidence for that purpose, a party is not so limited in showing that the witness had a motive to falsify the testimony that he has given. Thus bias or interest of a witness is not a collateral issue and extrinsic evidence is admissible thereon," and it cites Battaglia.

THE COURT: The motive and bias must go to something involved in the trial, isn't that so? Sam Kaplan doesn't happen to be on trial here.

MR. LA ROSSA: Sam Kaplan was on trial in this very conspiracy.

THE COURT: Just a moment. Sam Kaplan was acquitted at the last trial and he is not named here as a co-conspirator as far as I recall.

MR. LA ROSSA: That, your Honor, is correct. However, there are decisions out of this circuit -- I don't have them at my fingertips -- that say although one is acquitted of a conspiracy count, it does not mean

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that the the party is not a conspirator, although not a defendant.

THE COURT: You have persons who are charged as co-conspirators. Are you making him a co-conspirator? Is that what you are doing?

MR. LA ROSSA: I think that the government made him one in the first trial.

THE COURT: No, no. The first trial has nothing to do with this trial on that subject and there is a bill of particulars giving the names of co-conspirators, and I don't see the name of Kaplan on there charged as a co-conspirator under this indictment.

MR. LA ROSSA: That's correct, your Honor. May it please the court, I think that that bill of particulars, it is incumbent upon the government to include each and every party that they believe is a co-conspirator.

THE COURT: That's why I say are you making him a co-conspirator?

MR. LA ROSSA: Yes, I am.

THE COURT: In other words, you say that Kaplan is a co-conspirator.

MR. LA ROSSA: By virtue of the testimony, the prior testimony of this witness.

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THE COURT: The prior testimony where?

MR. LA ROSSA: At the 441 case, your Honor, which I think was Docket No. 441.

THE COURT: That is a novel doctrine.

MR. LA ROSSA: I am sorry?

THE COURT: I say that is a novel doctrine. A person who was not charged as a co-conspirator becomes a co-conspirator by election of a defendant's lawyer?

MR. LA ROSSA: I don't think that one becomes a co-conspirator by the election of either counsel, your Honor. I think the evidence might tend to determine that.

THE COURT: Unfortunately you are neither the grand jury nor the prosecutor, and therefore I am not at all sure you are privileged to say that's a co-conspirator.

MR. LA ROSSA: I don't think I have any right to.

THE COURT: You are saying it.

MR. LA ROSSA: In response to your Honor's question, I think I had the duty to respond in that manner. What I am saying is I don't have the right to make him --

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THE COURT: I am not at all sure that you have a duty to classify a person who is a co-conspirator when the government hasn't done so; but that is neither here nor there. I think that you have raised some legal cases and I certainly will look at them. Have you put your best foot forward so that I now have what your legal point is?

MR. LA ROSSA: I think so, yes, your Honor.

THE COURT: You recognize that this is a collateral inquiry, is that right?

MR. LA ROSSA: It is collateral to the issue.

THE COURT: Collateral to the issue on trial.

MR. LA ROSSA: But I am suggesting to your Honor that where a witness is willing to do what we suggest this tape proves he was willing to do, it then goes to bias, motive and intent and it is admissible under that theory.

MR. LAVIN: May I ask Mr. LaRossa a question? Are you saying that that tape and that transcript contradict what Mr. Conforti testified to?

MR. LA ROSSA: Oh, certainly, in some areas.

MR. LAVIN: Could we --

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MR. LA ROSSA: That is very much why I'd like to have him -- may I make another suggestion?

THE COURT: Yes.

MR. LA ROSSA: If your Honor is going to rule that we be allowed to listen to the tape, the witness is going to have to hear a portion of the tape. That was the reason that I suggested that we get that identification out of the way prior to the return of the jury. However, I will do it any way that your Honor chooses.

THE COURT: Let me ask you this question: why shouldn't the tape be run for the benefit of counsel for the defendant, the government attorney, in camera in court to make sure of exactly what it is you are offering?

MR. LA ROSSA: I see no reason.

THE COURT: All right.

MR. LA ROSSA: I think they have every right to.

THE COURT: What I suggest you do then is suppose you gentlemen and lady get your lunches and come back, if you can, say 10 minutes early. How long is it?

MR. LA ROSSA: Twenty-five minutes.

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THE COURT: Twenty-five minutes? All right. We will just have the jury wait. We will do it at 2 o'clock. It is now five after 1. I assume you have to get outside to have your lunch. Suppose we return at 2 o'clock. By that time I will have ready your cases.

We will listen to the tape, and see what there is to be done about the ruling.

MR. LA ROSSA: Fine, sir. May I ask your Honor for a direction that the witness -- I have a continuing cross examination and the witness not be permitted to speak to anyone about the facts in this case.

THE COURT: You know I hesitate only for this reason: that I would regard it as distinctly unprofessional for anybody to speak to a witness while he is under cross examination. I am not going to suggest to somebody that they should be professional because ifthey are unprofessional I will ride them hard.

MR. LA ROSSA: They are professional, sir, but agents aren't.

MR. LAVIN: I will instruct everybody no one is to talk to Mr. Conforti.

THE COURT: Mr. Conforti, please just spend your time on lunch and don't discuss this case or your testimony with anybody. Just keep it to yourself.

You are excused.

(The witness left the stand.)

MRS. ROSNER: Your Honor, I have an application. It will only take a moment.

Your Honor, during the course of Mr. Conforti's testimony he indicated that he communicated with Mr. Lavin and informed him of having seen the fugitive Jack Spada. I would like to inquire of the prosecutor through the court whether that testimony was in fact correct and would like a representation on the record whether in fact that ever occurred.

THE COURT: We are adjourned now until 2 o'clock.

MRS. ROSNER: Is your Honor overruling or declining my application?

THE COURT: I will give that the attention it deserves and let you know what I think about it.

MRS. ROSNER: Thank you, Judge.

(Luncheon recess.)

AFTERNOON SESSION

(2:00 p.m.)

(Mr. Peluso present.)

(In the robing room.)

THE COURT: I will go on the assumption that this is a fair and reasonable transcript of the tape. The tape will be marked Defendant's Exhibit --

MR. LA ROSSA: It has been marked, your Honor, Q.

THE COURT: Defendant's Exhibit Q, and the alleged transcript will be marked Exhibit Q1. I want to have an exact understanding of what it is you propose to do either with the transcript or the tape or both.

MR. LA ROSSA: At the present time?

THE COURT: Yes.

MR. LA ROSSA: I plan on playing the tape for the witness and having him identify that as the tape of the conversation between him and Mr. Kaplan, offering it into evidence and distributing the transcript, once the assistant U. S. attorneys agree to its authenticity, to the jury and play the tape to the jury.

THE COURT: Is there any particular part of it that you say bears on the witness' motive and intent or bias in respect to any defendant in this case?

MR. LA ROSSA: Yes, sir. I think if I may have the opportunity to correct the statement I made before the break. When I said to you that I thought that there were collateral issues involved in this, I do believe that there are portions of this tape that would be collateral to the examination in the trial right here. However, when I refer to other portions of the tape I do not believe they are collateral. I believe they bear directly upon the witness. I am going to have to go through this, your Honor, to point them out to you.

For one thing, the entire theme with respect to getting the money from Mr. Kaplan to leave him out of the thing --

THE COURT: Leave him out of what thing?

MR. LA ROSSA: Leave him out of this case, your Honor.

THE COURT: There is nothing which indicates that he was connected with this case at all.

MR. LA ROSSA: May it please the court, I think that you will remember that the testimony of Conforti is that Mr. Mileto brings him into this conspiracy and what he does with Mileto up to the date of the arrest is based upon this conspiracy.

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THE COURT: That's remote. As far as I can see, what you are reaching out for is Conforti was guilty of some kind of an offense against federal law for which he might be prosecuted. That is completely collateral and extrinsic evidence couldn't be introduced on that collateral matter.

MR. LA ROSSA: I agree.

THE COURT: You stated before the recess that you had some notion that this transcript would in some way indicate that Conforti had a motive to falsify his testimony against the present defendants. Show me wherein there is anything along those lines in this transcript.

MR. LA ROSSA: Yes, sir. The witness Conforti is willing, by virtue of this transcript, to accept money to leave someone out of the case. He also states that in the transcript he left Kaplan out on the prior testimony because of friendship or for whatever reason. I submit to your Honor that that goes to motive and it goes to the jury making a determination in this respect. The government, according to the testimony, is supporting this witness for money and I think the jury would have a right to determine that this witness would say or not say either the negative or the

positive for the money either received from the government on the one hand or from Mr. Kaplan on the other. That's No. 1.

No. 2, when we point to the testimony in this case or his testimony from the government in general, I might add, where he says to Mr. Conforti, "What did they do," put the words in your mouth and have him come right out with it and he said: No, they don't go that far but they sure do -- I don't have it in front of me. I think your Honor remembers the section I am referring to. It's about half way into the tape.

THE COURT: I think you better be very specific in what you are contending for her because you haven't persuaded me that there is anything that is short of absolutely remote on the issue of bias or interest of the witness in the present case against the present defendants or the conspirators. I am not going to start trying some other collateral matter under the guise of some which is supposed to attach this witness to show he is generally unworthy of belief.

MR. LAVIN: Before we forget it I would like to bring up a point. Mr. La Rossa asked Mr. Conforti on cross examination about this $20,000, implying that Mr. Conforti made a call threatening to frame

Mr. Kaplan unless Kaplan came across with $20,000.

THE COURT: That seems to be quite wrong according to the transcript.

MR. LAVIN: This transcript contradicts that.

THE COURT: There is no doubt that the question as put was inconsistent with the transcript that's before us, and regardless of that the question was asked and the witness answered it. It is a collateral matter.

This shows the danger of getting into a trial of a collateral issue.

MT. LA ROSSA: May I respond to that, please, since the record is devoid of my answer.

THE COURT: I don't think it is important. Wehther or not you said it that way or didn't say it that way, it isn't important. Even if you said it in the way in which it is in the transcript I want to know whether his transaction which Kaplan bears on the reasons and motives which he may have in testifying for the government and by the widest stretch of the imagination I am having the greatest difficulty in finding something that isn't absolutely too remote to show any such bias or interest.

MR. LA ROSSA: Your Honor will note on one

page where Conforti says --

THE COURT: What page?

MR. LA ROSSA: 14.

THE COURT: Yes.

MR. LA ROSSA: The fourth down where it says "C" for Conforti.

"I got to go for sentence maybe in another week, week and one half from now -- I don't know if I'm goin. They're going to move to win another indictment on me. When I'm over with this they're gonna slam another on me. I don't know in institution or where. They promised me one thing -- if I look good on the effing stand in front of all these people.

"I plan to go away for three years maybe maybe a little more."

THE COURT: Mr. La Rossa, now you are switching from a presumed transaction with Sammy Kaplan to some kind of assurance from the government for his testimony. That seems to have become the popular fancy at the moment, to attack the government and the government's witnesses on the promises and assurances and for detailed reference of how that is being exploited, take a look at the Pfingst opinion that just came down. I am not concerned with that. I am not cutting you off from that area at all. That part of it you haven't presented as yet.

MR. LA ROSSA: I didn't think I would even have to get to that. I don't think it is collateral as to the other issue.

THE COURT: The point of the matter is that what you have now pointed out to me has nothing at all to do with whether or not the Sammy Kaplan business is properly admissible in evidence.

MR. LA ROSSA: This, I submit to you, relates to his testimony on this trial. And has nothing to do with the Kaplan matter.

THE COURT: You mean the talk about the sentence?

MR. LA ROSSA: That I have to look good.

THE COURT: You are moving away from what we

convened here for. We convened here to find out whether the story about Sammy Kaplan was an admissible subject because it could go, you said, presumably, that it shows a motive and intent to falsify his testimony against the present defendants.

Let us leave out the problem as to whether the government did or did not give assurances to this man for his testimony. That's got nothing to do with Sammy Kaplan.

MR. LA ROSSA: I submit to you that --

THE COURT: The theme of minimization hit the popular fancy for a long time. Now, the popular fancy seems to be this business about promises for cooperation but I am not stopping you from going into promises for --

MR. LAVIN: On page 11, Conforti says, about halfway down:

"They didn't make no effing promises, they first promised they're gonna take care of my family whatever put them in a safe place whatever."

THE COURT: But, you see, you are not adding anything by pointing this out except to indicate on another subject which is not before us, there is something in this tape. We are not onto that other subject at the present time.

time.

MR. LA ROSSA: I submit to you, may it please the Court, that if this witness is ready to deal as an intermediary with a third party for the payment of money to leave him out of testimony and further if he admits in the tape that he was willing to leave out this same individual in testimony before another court, that that bears on whether or not he would accept money for truthfulness. Your Honor allowed Mr. Lavin before to say it was asked of him as if he was getting the money. I do sincerely believe that is the case here and I haven't explored it as completely as I would like to. But in addition --

THE COURT: I think I have gone far enough, now that I have read all your cases and I have read this transcript so as to protect your record as follows:

A cross examiner may not cross examine a witness on collateral matters in order to show that he is generally unworthy of belief and may not introduce extrinsic evidence for that purpose other than records of certain convictions. It is true that a party is not so limited in showing that the witness had a motive to falsify the testimony that he has given implicating the defendants on trial and external circumstances from which probable bias

or interest in that regard may be inferred may be allowed.

In this situation that you have presented here, you have been allowed, without objection from the government until this point was reached, to raise the issue as to Sam Kaplan, who is neither a conspirator nor a defendant in this case. The question before us is not whether Conforti was guilty of an offense against federal law for which he might be prosecuted but rather whether he had a motive to falsify his testimony against any defendant or conspirator by calling Sam Kaplan. That's extrinsic evidence on a collateral matter and is far too remote to show any bias or interest of the witness in the present case against the present defendants or conspirators. The proposed evidence from the tape and the transcript does not go to the question whether he is helping to establish this cause out of bias or improper motive. The incident does not show alleged hostility to these defendants or a motive to falsify his testimony against these defendants. Conforti's transaction, whatever it was with Kaplan, does not bear on the reason or motive which the witness may have in testifying for the government. The circumstances are so little probative force on the subject of a motive to falsify, that in the exercise of discretion the Court excludes them with an exception to counsel.

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MR. LA ROSSA: May I refer your Honor to a few other things that have nothing to do with the Kaplan thing?

For example, on page 9 --

THE COURT: Please, if you are now saying tc me that you are going off on another subject and proposing to make use of this transcript or the tape to contradict the witness on another subject, I want to know what the other subject is, whether you have already examined on it and wherein lies the contradiction.

MR. LA ROSSA: Yes, sir. On page 9 --

THE COURT: First tell me the subject you are going on.

MR. LA ROSSA: On the witness' telling the truth in this case. I think your Honor will recall that he said that ne told the truth and never lied. Halfway down the page on page 9 where it starts out with Conforti saying:

"I don't know. All I know I gotter go two more cases.

"MR. KAPLAN: In other words if you don't lie they're gonna hang you.

MR. CONFORTI: Yup.

"MR. KAPLAN: Huh.

"MR. CONFORTI: That's the way it is."

THE COURT: What is your position about that

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subject on cross examination on that particular portion, Mr. Lavin?

MR. LAVIN: These words have Mr. Kaplan to people involved in narcotics talking on the phone. In other words, if you don't lie, they are going to hang you and that's contradicted by other statements.

THE COURT: Doesn't that mean -- all you are telling me is that there are other portions you would read into the record but why isn't Mr. La Rossa entitled to show that as to the present case, if it allegedly refers to the present case, if Conforti doesn't lie, they are going to hang him.

MR. LAVIN: I would assume that he is talking about the government. I would assume that but there is a possibility he is not talking about the government.

THE COURT: That is up to the jury to determine.

You say you got something in reprise that you say you would want to bring up and by the way, in dealing with this, I don't expect and I know -- I have a high regard for your discipline, for you to make use of anything which makes it look as though you are getting across to the jury something which has been ruled out of evidence. I know you wouldn't do that but I just say it out of an excess of caution.

pm

MR. LA ROSSA: Do you want me to go to my next point?

THE COURT: Let us see if we can agree on what --

MR. LAVIN: On page 11, the last four, the second from last K from the bottom, "But these guys are lying" the sentence that starts there, "But these guys are lying. They get 2-1/2 years to lie and you're getting three years for telling the truth.

"MR. CONFORTI: I'm gonna get more than that."

On page 16 on the bottom, the line that starts "CONFORTI: "I'll be painting the bars" and Kaplan says "Huh," and Conforti says "I'll be painting the bars" Kaplan says "You ain't gonna paint no bars. They'ss send you to an army base someplace.

"CONFORTI: I don't know and I don't give a blank.

"KAPLAN: Joey, you did enough for them. One thing -- you didn't lie.

"CONFORTI: What?

"KAPLAN: You said you didn't lie so they can't hurt you too much. They'll make you lie -- don't worry -- before it's over they'll make you lie like a bastard.

"CONFORTI: I won't lie --that's one blanking thing I won't lie."

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THE COURT: All right, now, what other subjects, Mr. La Rossa?

MR. LA ROSSA: Page 14, the last line on page 14 and over to page 15.

THE COURT: What about them? That's Kaplan talking.

MR. LA ROSSA: No, it is Conforti on the top of the next page.

THE COURT: You mean on 15?

MR. LA ROSSA: Yes. It is Kaplan on 14. You have to read both in conjunction. Then the answer of Conforti.

THE COURT: All right. That is in the same area.

MR. LA ROSSA: It is.

THE COURT: I am going to hold that so far as the issue of the truth of his testimony on the witness stand, that you may question him on the matters you just called to my attention. The government may, by redirect examination, amplify from this record on the same subject if there is any amplification that they wish to offer. In each case, I want you, as disciplined counsel, not by indirection or inadvertence, to get into this record the story of the Kaplan payment, which I have already ruled upon.

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MR. LA ROSSA: Do I understand your ruling then that we may not go into that any further or that we may not play the tape on it?

THE COURT: I think that the subject has now been covered, and when you say any further I haven't got the slightest idea what you have got in mind.

It seems to me that you encircled the subject adequately. Indeed, you probably were allowed to go into it excessively considering its collateral character and the extrinsic evidence that you offered to establish it by waiving the report of the tape in front of the jury, with its obvious effect on the jury, and if you wish to go any further on it, if it doesn't involve repetition, I can't imagine what that will be, and will not rule on it in advance.

MR. LA ROSSA: I didn't want you to. I just wondered whether you were prohibiting me from getting into areas that I have not covered.

THE COURT: I have a very simple formula. I think all of this nonsense about offering to make proof is very simply covered by a disciplined series of questions to elicit what it is that is wanted; and by your questions, if they are properly framed, nobody is hurt and the line becomes very clear, and the offer of proof is thus made.

Where it is obscure, of course you have to amplify it by declaratory means, but generally a reasonably good cross examiner can get his point across in the proper question, can get it across to the Court so that the Court can realistically understand what it is that is wanted and rule at the time.

All I am saying is that without any unnecessary repetition, on the subjects which are foreclosed by answers already given by the witness, if there is anything not heretofore inquired into, which is unobjectionable, I will consider its offering.

MR. LA ROSSA: May I have just a minute or two more to complete this to make sure there is nothing else I want to bring to the Court's attention?

THE COURT: Sure.

MRS. ROSNER: Judge, while Mr. La Rossa is doing that --

THE COURT: Do you have it?

(Discussion off the record.)

THE COURT: Mrs. Rosner, before the recess called attention to the fact that the witness Conforti had given testimony indicating that he had told Mr. Lavin and Mr. Feffer that he, Conforti, had spotted Spada, and Mrs. Rosner now wants to put the government to the test of

announcing whether the witness made such a statement to Mr. Lavin.

MR. LAVIN: The day -- he infomred me that he had seen Jack Spada downstairs. Two BNDD agents went downstairs and he was gone. I think he informed me about two hours or an hour and a half after he had seen him.

THE COURT That settles that matter.

MR. LAVIN: I don't know if the period of delay was occasioned by the fact that I was somewhere else.

THE COURT: All right.

Off the record.

MR. DUKE: May I make a few minor points on Mr. La Rossa's offer.

THE COURT: Yes.

MR. DUKE: First of all I join in his offer and I would like to make clear that I think the transcript warrants the inference that Mr. Conforti was soliciting a bribe on his own behalf and not on behalf of anyone else.

THE COURT: If that is the proper construction, I would definitely rule it out. That makes it very clear that there is no motive and intent in respect to these defendants.

MR. DUKE: Secondly, it seems to me highly artificial

to rule out -- to rule in his statements about lying and what's been promised him, and at the same ruling out the solicitation of a bribe, because it seems to me that the context, his statements about lying and about what he's been promised can only properly be understood in the context of the fact that he is soliciting a bribe.

THE COURT: That anomaly you will find has been traditional Hornbook law, taught in every elementary course on evidence, where something occurs in the court's presence, and from the witness stand there are rules that are not necessarily co-extensive with the rule bearing out extrinsic evidence on a collateral matter.

So I don't find any special problem in my mind at least, with exception to you, on that score.

MR. MITCHELL: Your Honor, may I make an objection on behalf of my defendant Barrett to the refusal to permit the playing of the tape and may I have the right if on cross examination without being repetitious, I bring out a direct motive which would require the playing of the tape. May I make a further offer at that time?

THE COURT: As I said to Mr. La Rossa, I am not anticipating what you gentlemen may, through initiative and inventiveness, think up. I am merely ruling on the matters as they come across the desk.

MRS. ROSNER: Your Honor, may I put on the record the inquiry which was made while the reporter was gone? I had asked the Court if we might inquire through the Court whether the government would be willing to turn over whatever reports they may have indicating the date of death of Jack Spada. I would like to make that inquiry at this point.

THE COURT: Why can't you find that out by yourself? Is that a subject that would normally require discovery from the government or is that something than you can find out by a simple telephone call to some news agency?

MRS. ROSNER: Your Honor, I believe that Mr. Spada was found dead at a time well subsequent to the actual date of his death. I think the government conducted or had conducted at its behest an autopsy analysis which would be in the form of a report which would give at least an approximation of the date of his death. That material is not available to counsel, your Honor, through any normal investigative means, apart from serving a subpoena on the United States Attorney's office; and rather than do that I would just inquire through the Court whether the government would be willing to give us such reports. It may very well be exculpatory matter, Judge.

THE COURT: I will go to the extent of requesting

Mr. Lavin after the recess this afternoon to make inquiries along the lines that you have indicated, namely, that the date of discovery of the death and the date of death may not coincide and the government may have some direct information on that subject.

If so, I will hear from Mr. Lavin as to whether or not there should be a disclosure.

MRS. ROSNER: Thank you, Judge.

THE COURT: In the meantime let him find out, if he can find out, what the fact is. All right. Let's resume.

2a pm

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(In open court; jury present.)

THE COURT: Now, ladies and gentlemen, as often happens during the course of a trial, interesting legal questions arise, and since the court doesn't know all the law the court has to go look in the books, and we have spent the last hour in discussing legal questions with which you have no concern. I am sorry that you have been delayed.

J O S E P H C O N F O R T I resumed.

CROSS EXAMINATION CONTINUED

BY MR. LA ROSSA:

Q Mr. Conforti, when I asked you before the luncheon break whether anything could make you put someone in or leave someone out of the case, you said no, right?

A I don't understand the question.

Q When I asked you before lunch, sir, whether there was anything that would make you put someone into a case that didn't belong in that case, or leave someone out of a case that did belong in that case, you said you wouldn't do that, isn't that right?

MR. LAVIN: I object to the form of the question.

THE COURT: Sustained.

Q Did you testify on the trial against Sam

Kaplan?

A I didn't testify against him, no.

Q As a matter of fact, you didn't tell the truth, did you?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

Q Did you lie in that trial against Sam Kaplan?

A I never testified against the man.

Q Were you asked whether or not you had anything -- that you did anything with Sam Kaplan?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you deliver heroin to Sam Kaplan?

MR. LAVIN: Objection.

THE COURT: Sustained.

A What's the question?

THE COURT: You don't have to answer that. The jury will understand, as I told you the other day, that questions which are not permissible -- and I decide whether they are permissible or not -- are not to leave any inference or innuendo with you as to what the answer might or might not be. An unanswered question is just as if it never had beenasked and should not influence you whatsoever. The only thing that will

influence you is the testimony which is given on questions that are not objectionable.

BY MR. LA ROSSA:

Q All the heroin that you told us about on direct testimony, where did you get it from?

A I never received it.

Q Did you ever touch heroin?

A Yes.

Q Where did you get it from?

A I never -- the heroin itself?

Q Yes.

A I never got it. I only mixed it.

Q Where did it come from, do you know?

A I don't understand the question.

Q Do you know whether it came from Mr. Sperling?

A Yes.

Q Did you ever mix with Mr. Spada?

A Yes.

Q Did you ever make a delivery with Mr. Spada?

A Yes.

Q Was that delivery to Mr. Kaplan?

A On one of them, yes.

Q Beg your pardon?

A On one of the occasions, yes.

Q Didyou ever tell an assistant United States attorney about that delivery?

A No, sir.

Q Did you ever tell any of the agents about that delivery?

A No, sir.

Q Was that because you chose to leave it out?

A I was never asked. They were just concentrating on Sperling and Sonny Gold, Jack Spada.

Q They never askedyou about Mr. Kaplan?

A Never came up.

Q When Mr. Kaplan spoke toyou on the phone did you tell Mr. Kaplan that they kept bringing up your name, trying to find out what I knew about you?

MR. LAVIN: Objection.

THE COURT: Are you objecting to the form? Is that it?

MR.LAVIN: Yes, your Honor.

THE COURT: Sustained.

Q Did you have a conversation with Mr. Kaplan on October 28th of this year?

THE COURT: I think we have had that, Mr. LaRossa.

Q Did you in that conversation,sir, tell Mr. Kaplan words to the effect that they kept bringing up his

name?

A I don't remember the exact words.

Q Tell me what you recall being said about that particular subject.

MR. LAVIN: Objection.

THE COURT: I am going to sustain the objection.

Q Did any agents --

THE COURT: Without indicating toyou any variance from the ruling I made in the chambers.

Q Did there come a time, sir, when you were asked questions by any agents or any assistant United States attorneys about Mr. Kaplan?

A No, I don't think so.

Q You don't think so?

A I never spoke about Kaplan.

Q Never mentioned a word about him?

A I know his name came up during some conversation but I never spoke to anyone about him.

Q Did Mr. Kaplan say to you on the phone words to the effect of --

MR. LAVIN: Objection.

THE COURT: We don't know what the question is. The objection is overruled.

Q -- "Did they try and get you to make something up"?

A I don't remember that.

Q You don't remember that? Did you say in response to that, "They didn't go to that extent"?

A No, Jack told me that he didn't speak to no one about it. I stilldon't understand the question.

Q Did you tell Mr. Kaplan on the phone that they didn't go to that extent but they kept talking about "Ceil with your phone number in her book"? Did you say that to Kaplan?

A I think so.

Q Did you say that "They kept on pumping me about you"?

A Well, I had to convince the man to give up money.

THE COURT: He is just asking a specific question, if you remember telling Kaplan that they kept on pumping you about something.

MR. LA ROSSA: About him, Mr. Kaplan.

A If I did, I was lying to Sammy.

Q Did they ask you -- when I say "they" I am referring to the agents or any assistant United States attorneys -- did you ever tell them a story about Mr.

Mileto getting some badges and going out and robbing narcotics and pretending he was a police officer?

A I think that came up, yes. I'm not sure but I think it came up.

Q Is there any question in your mind about that?

A Yes.

Q You are not sure of that?

A I'm not sure because there was so much going on at that time.

Q Did you tell them that Mr. Kaplan was with Mr. Mileto at that time?

A No, sir.

Q You did not?

A I don't think so, because I didn't know.

Q Did you tell Kaplan that if you looked good on the stand here during this trial --

A No, sir.

Q -- it would be good for you before the sentence?

A No, sir.

MR. LAVIN: Objection.

A I told Sammy that I was never going to lie for him and no one else; if the district attorney or the United States Government brought in Sammy Kaplan

and me together, that I was not going to lie for him or no one else, that I was going to tell the truth.

Q Did you tell Mr. Kaplan, "I go for sentence in another week or so"?

A I think so. I am not sure.

Q Did you tell him, "They are going to move another indictment on you"?

A Well, if Jack brought in his name it had to be an indictment because Sammy was dismissed from the trial.

Q Did you say, "When I am over with this one they are going to slam another one on me"?

A I think so. I'm not sure.

Q Did you say to him, "They promised me one thing -- if I looked good on the stand --" did you say that?

A I don't remember. No, sir, I don't think so.

MR. LA ROSSA: May I use Exhibit Q for recollection purposes?

THE COURT: On that subject, yes.

Q I show you what's been marked --

THE COURT: I show you a paper, Exhibit Q, or whatever it is.

Q -- Exhibit Q for identification --

THE COURT: Q1, I believe it is.

Q -- Q1 -- I am sorry -- and I point you to the 14th page and I ask you to read it to yourself, particularly the top half.

A I read the top half.

Q Did you read it?

A Yes, about the 20,000.

Q Now read further down, please.

MR. LA ROSSA: May I point to him where to read to?

THE COURT: Yes.

Q Don't say anything, just read. Read this paragraph right here, if I may (indicating).

A There is a lot of words missing from what I said on the tape.

Q Does that refresh your recollection that you told him on that tape, on that phone, that you were coming up for sentence in a week or so?

A Yes, and I lied.

Q That was a lie?

A Yes, because I didn't know.

Q Does it refresh your recollection that you told them that you had to look good on the stand?

A It says on here but I don't remember.

Q You have no recollection of saying that?

A I still don't have no recollection. I may have said it but I don't remember.

Q If you did say it, would it have been a lie?

A Well, I had to build up an image to get money from Sammy, no matter how it was done, to make it that -- the image had to be built up, it had to sound important to Sammy to get this money from him.

Q In other words, the only purpose of this phone call --

A Was to get money

Q -- was to convince Mr. Kaplan to give up this money?

A And I told him that someone was going to talk about him.

Q By the way, you told us that when you saw Mr. Spada in the street you told Mr. Lavin about it, right?

A I did.

Q Did you wait a couple of hours before you told him?

A No, I told him right after I saw him.

Q Immediately after you saw him?

A Yes, sir.

Q You are sure of that?

A Yes.

Q You didn't wait an hour and a half or two hours to tell him?

A As far as I remember, I told him because I was in the restroom at that time when I saw him. I don't remember -- it could have been an hour, I don't remember, because Mr. Lavin was still running up and down.

Q Didn't you want enough time before you told Mr. Lavin so that Spada could get out of there?

A He left so fast even before -- when I looked out the window he just out of the cab, someone spoke to him, he got in, took off. He was gone even before I left the restroom. I told Mr. Lavin that.

Q Did Mr. Kaplan say to you on that phone, "Are they framing you"? Do you remember him saying that, meaning you, Mr. Conforti?

A I don't remember.

Q Did you say, "They say this and say that, I am doing this and I am doing that"? Do you remember that?

A I could have said it. I don't remember.

Q Did you say this, "I don't know, all I know I got to go two more cases"?

A I think so. I'm not sure.

Q Did he say, "In other words, if you don't lie they are going to hang you"? Do you remember him saying that to you?

A If I lie they are going to hang me?

Q If you don't lie they are going to hang you.

A I don't -- I am not sure but if that's Sammy saying it --

Q Did you say, "Yup, that's the way it is"?

A I don't think so. I told Sammy I was going to testify in two trials. See, I may have lied on this phone call but not on the stand.

Q Please read this to yourself.

A No, because that's all lies I told Sammy.

MR. LA ROSSA: I ask your Honor to direct the witness to read that portion of the exhibit, please, to determine whether it will refresh his recollection as to a question I just asked him.

THE COURT: Is there anything that will refresh your recollection as to what occurred on that occasion on that particular subject?

THE WITNESS: If I said it, it was a lie, your Honor, that whole conversation I told Sam was a lie.

THE COURT: No, that's not what he was asking you.

What page are you talking about?

MR. MITCHELL: Your Honor, would you ask the witness to speak louder. I didn't hear.

THE COURT: Speak louder. What page are you talking about?

MR. LA ROSSA: 9, sir. It's open in frong of the witness. That page.

THE COURT: Well, you may read the exchange to the jury, if you want to, and you may ask the witness a question on the basis of that.

Q Mr.Kaplan: "I don't believe this. In other words, they frammin you too.

"Conforti: Oh. On the stand, they say this" -- do you want me to read it verbatim? Should I read it verbatim, your Honor?

THE COURT: You know you shouldn't do that.

MR. LA ROSSA: Will you inform the jury I am leaving out words purposely.

THE COURT: We don't have to have words that offend our ears or our upbringing or sensibility and any such words don't add to the content of any statements and out of consideration of decency and delicacy, under normal language, normal people conduct their affairs, we omit that kind of language. Go ahead.

Conforti

Q "On the stand, they say this and say that. I'm doing this and I'm doing that. They know its

Kaplan: "So what do they want from you now"

Conforti: "I don't know. All I know, I gotter go two more cases."

Kaplan: "In other words, if you don't lie they're gonna hang you."

Conforti: "Yup."

Kaplan: "Huh --"

Conforti: "That's the way it is."

A That's a lie.

Q I am not asking you if it is a lie, Mr.Conforti. I am asking you if that's your words to Mr. Kaplan on the phone.

A I think so.

Q And you called him, he didn't call you, is that right?

A I called up Sammy.

Q You initiated the call?

A Yes.

Q He did not call and ask you to call him, did he?

THE COURT: That was three times for the same question. Please don't do that.

Q Was that whole phone call a lie?

MR. LAVIN: Objection, your Honor.

THE OURT: No, he may answer if he wishes to.

A Most of it, yes.

Q Including the Spada business?

A No. Because I had to try to get money from this man. I told him I had to testify in two cases. If his name came up I wouldn't lie for him, so if his

name came up he would be on the Capra case.

Q Tell me something, when you were arrested did you have any money?

A No, sir.

Q And that was last June that you were released from West Street?

A Yes.

Q And you told us that the government has supported you during these months and you had $2000 in your pocket?

A Yes, sir. That was money that my wife had when I was in jail.

Q Do you have any other money?

A No, sir.

Q Weren't you going to take part of that $10,000 for yourself?

A No, sir.

Q Not a penny?

A Not a penny.

Q How many times did you talk to Jack Spada from the day you were released from West Street until today?

A A few times.

Q What do you mean by a few?

A About two, three times.

Q When were the two or three times?

A Right after that I told Jack that Sammy couldn't have -- he don't have the money.

Q Is that the second time?

A Yes. I explained to himthings were bad for him too, what he is going through and he would have to go on another case and it would be hard for the man to get this kind of money.

Q Let me see if I can follow this. The first time you called and he said he wanted -- the first time

A The first time I called Jack, when I spotted him --

Q The second time was after you spoke to Mr. Kaplan?

A Yes.

Q So that would have been some time after October 28th, is that right?

A Around that area, yes.

Q Did you talk to him again after that?

A No, sir.

Q Just those two times?

A It could have been another time because on the last one I gave him Ray's telephone number that Sam would be contacted because he wanted his phone number.

Q Did you give that phone number to anybody?

The number that you reached Mr. Spada at?

A No, sir.

Q Have you always had that number?

A Yes.

Q Was it the number that you used to reach Mr. Spada at in the old days, a year ago?

A No. It was a public phone booth in Harlem.

Q You always called him at that phone?

A He hangs around the phone.

Q You never told Mr. Lavin about that?

A No, sir.

Q Or any of the agents?

A No, sir.

Q Are there any other people, Mr. Conforti, that you dealt with over that year and a half or so that you haven't told us about?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you have any narcotics dealings with anybody that you haven't mentioned in this courtroom in the last year and a half?

MR. LAVIN: Objection.

THE COURT: Sustained as to form.

Q Have you mixed heroin for anyone other than

the people you told us about here?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you deal with Mr. Kaplan in 1971 and in 1972 involving narcotics?

MR. LAVIN: Objection.

THE COURT: You may go back to the last question on which I sustained the objection and put the question.

Read the question to the witness, and he may answer it.

(question read.)

A As far as I remember, that's about it.

Q Is there any question in your mind about that?

A I don't think so.

Q Have you delivered heroin for anyone other than the names that you mentioned here?

A I don't understand the question.

Q Have you delivered heroin for another individual other than the names you have mentioned in this courtroom?

A I only made one delivery.

Q Have you received heroin or any narcotic drug from anyone other than the names you have mentioned

in this courtroom?

A I don't understand the question.

Q How many times have you spoken to Ben Mallah?

A A few times.

Q How many?

A If I saw him out on the street I said hello. Are you talking about that, any conversation like that?

Q Anything.

A I seen him around the area so many times.

Q You said hello to him?

A Yes.

Q How many times did you ever do anything more than say hello to him? Have a conversation with him I am referring to.

MR. LAVIN: Objection.

THE COURT: I am going to sustain that objection.

Q How many times have you sat down at a table with him and spoke to him?

MR. LAVIN: Objection.

THE COURT: I will allow it.

A Just between me -- myself or with other people at the table?

Q Whether there were other people there or not.

How many times have you and Mr. Mallah spoken to each other?

A Just hellow and that was it.

Q That was it? Nothing more than that?

A To do with narcotics, no. I never spoke to the man.

Q So the only thing you can recall ever doing with Ben Mallah is say hello to him and have him say hello to you as you sit there now?

A With other people with me, yes. And there was -- talk on the table about drugs, that he was sitting there.

Q Did you ever talk to him alone?

A No, sir. We said hello andthat was it.

Q Do you remember the time you told us that you met him at the Stage Delicatessen?

A No, sir.

Q You don't?

A I met him so many times at the stage.

Q You told us that other people were with him?

A Yes.

Q Do you remember that now?

A Yes.

Q When was it?

A I think it was at the end of '72 or beginning '73.

Q Is that the best you can do on dates?

MR. LAVIN: Objection.

A I don't remember any dates.

Q You can't do anything better than that?

MR. LAVIN: Objection.

THE COURT: The form is bad but it will take less time to get the answer.

Q Do you remember what year it was?

A '72.

Q Are you sure of that or pretty sure of that?

A Yes.

Q Do you remember what month it was?

A It could have been September, October -- I know it was cold. I had a heavy coat on.

Q When you told us about mixing heroin you gave us a date almost each time that you mixed, is that right?

A Most of those dates that I remember.

Q You remembered those dates fairly well, didn't you?

A Yes.

Q The dates of the mixing?

A Yes.

Q But you don't remember any of the dates that you met Mr. Mallah?

MR. LAVIN: Objection to form.

THE COURT: Do you remember?

THE WITNESS: I remember so many times.

BY MR. LA ROSSA:

Q There were two occasions where you met him and you said something other than hello that you told us about?

A There was another case, he was going to Florida. He was telling me he was going to Florida, that I just came back from Florida from vacation.

Q When was that?

A It was in the winter, '72.

Q The same winter we were talking about before?

A Or it could have been in '73.

Q Do you expect to go to jail based upon your plea of guilty in this or any case?

A Whatever the court decides. I don't know.

Q Do you think you are going to go to jail?

A I did something wrong. I have to pay for it.

Q So you expect to go to jail?

A Whatever the court decides.

Q Have you talked to Mr. Lavin or any of the assistant U. S. attorneys about whether or not you might go to jail or not?

A It didn't come up. They just told me that at the court it will be recognized.

Q Never came up?

MR. LAVIN: Objection, your Honor.

THE COURT: I think you misheard his answer.

Q Did you ever ask Mr. Lavin or any Assistant U.S. Attorney what they thought about your sentence, were you going to get a sentence of jail time, did you ever ask him that?

A Whatever, it is up to the Court. The Court sentences me.

Q So you did ask?

A Yes.

Q Many times?

A At the beginning, yes.

Q Did you ask any of the agents?

A I don't think so.

Q Did anyone tell you not to worry about it?

A No, sir.

Q Not a one? But you are doing this testifying because you don't want to go to jail, right?

A I am doing this testifying because it has been brought up so many times. One case links to another.

Q Mr. Conforti, are you testifying because you don't want to go to jail?

A I am testifying because I feel I am doing the right thing and if I go to jail, it is up to the Court.

Q In other words, you are doing this because you feel this is the right thing for you to do?

A Yes, sir.

Q And that you are being a good citizen in doing it?

A I may have a second chance in life to start all over again, no matter if I go to jail or not.

Q Have you done any work since you have been arrested?

A I can't. No, sir.

Q You ran a gas station for a good many years, didn't you?

A It had it about a year.

Q Is that all?

A Yes.

Q Are you a mechanic?

A No, sir.

Q You are not?

A No, sir.

Q Whatdid you do before?

A I worked in the building line.

Q In what, construction?

A Yes, sir.

Q Are you trained in construction?

A I was a laborer.

Q You haven't gone back and been a laborer either, have you?

A Since I am -- now you mean?

Q Since the day you left West Street.

A I can't go to work.

Q Is that because the government told you not to go to work?

A No, sir. I am in protective custody.

Q What?

A I am under protective custody.

Q Were you under protective custody in October?

A Yes.

Q Were there marshals protecting you and your family?

A Yes.

Q Some place outside of New York, right?

A Yes.

Q Did you ask the marshals for permission to go to a public phone to call Mr. Kaplan up?

A I told them I had to make a phone call. I was eating in a restaurant and I made a phone call from the restaurant.

Q Anybody tell you when they are going to stop paying you money?

A No, sir.

Q Anybody tell you that you have to file an income tax return and declare the money that the government has been giving you as income?

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MR. LAVIN: Objection.

THE COURT: Sustained.

Q Anybody tell you you didn't have to pay income on that money?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you file an income tax return for last year?

A No, sir.

Q Were you charged with any tax evasion charges or failure to file taxes?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did anyone tell you that you didn't have to file a tax return last year?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you have a conversation with Mr. Lavin or any Assistant U.S. Attorney about whether or not you should file an income tax return?

MR. LAVIN: Objection.

THE COURT: Overruled.

A Yes.

Q Did they tell you that you didn't have to file a tax return?

A They didn't tell me that.

Q Did they tell you that you had to file a tax return?

A Yes.

Q And not withstanding that, you didn't file a tax return?

A I told them I didn't file it for the last year. I was on compensation, I didn't work.

Q Have you ever been convicted of any crimes other than the one that you pleaded guilty and are awaiting sentence here?

A On narcotics, no, sir.

Q Anything?

A When I was 13 or 14.

Q Other than that?

A No, sir.

Q When Mr. Mileto left the packages in your garage as you just told us about, you got paid for doing those things, did you not?

A After I found out what it was, yes.

Q And you demanded money from him, did you not?

A I never asked for money.

Q It was just voluntarily given to you?

A If he gave it to me, yes, I took it.

Q Did you accept whatever they gave you?

A I didn't get paid that much. I took whatever they gave me.

Q Tell us what you got paid.

A 200 for the first time.

Q I am talking about in total, Mr. Conforti.

You told us about all the mixings that you did. Tell us how much you got paid for all of that activity.

A 4,000 that Herbie gave me and plus a few hundred Louis gave me.

Q Did you ever get any money from Mr. Mallah?

A No, sir.

Q Did you ever have a discussion with him about giving you money?

A No, sir.

Q In fact, you never had a discussion with Mr. Mallah about anything other than going to Florida, right?

THE COURT: That is now repeating, Mr. La Rossa.

MR. LA ROSSA: Withdraw it.

Q Is that the first time that you told anyone that you made a phone call to Sam Kaplan in October?

THE COURT: I think we have been through that subject sufficiently. This is now undue repetition.

MR. LA ROSSA: I think I just asked about that. I have one or two questions and I will finish. I really

don't think they are repetitive.

THE COURT: You want two more opportunities to be repetitious, is that what you are saying?

MR. LA ROSSA: I don't think so.

Q Did you tell anyone other than Mr. Spada that you called Mr. Kaplan in October 1973?

A I was told not to, no.

Q Who told you not to?

A Jack.

Q So you didn't tell your wife, then?

A No, sir.

Q You didn't tell the marshals who were with you in the restaurant?

A No, sir.

Q Or anyone else?

A No one knew except me and Jack. Jack stated if I would have told anybody, that his life was at stake, especially Kaplan. And that's the way I left with him.

MR. LA ROSSA: I have no further questions, your Honor.

THE COURT: Mr. Duke, do you have any questions?

MR. DUKE: Yes, I do, your Honor.

CROSS EXAMINATION

BY MR. DUKE:

Q Mr. Conforti, I believe you testified that in this conversation with Mr. Kaplan, you were talking about a man named Ray, is that right?

MR. LAVIN: Objection.

THE COURT: It is a preliminary question. He may ask a preliminary question without repetition. Go ahead.

Q Is that correct?

A What was the question again?

Q You were discussing, mentioning in your conversation with Mr. Kaplan on October 28th, you mentioned a man named Ray?

A Yes, sir.

Q Who is that?

MR. LAVIN: Objection, your Honor.

THE COURT: Overruled.

A Ray is Albert Victor Ray's brother-in-law.

Q What is his occupation?

A Which one?

Q Ray.

A I think he works in the building line.

Q Sorry?

A I think he works in the building line, construction.

Q Mr. Conforti, was there never a time prior to your getting on the stand in thiscase that anybody in the United States Government asked you to tell them everything you knew about narcotics?

THE COURT: I think we have been over that, Mr. Duke.

Q Was Jack Spada in a mental institution?

MR. LAVIN: Objection.

THE COURT: He may answer if he knows.

A I never heard ot that, no.

Q You never heard of that?

A It's the first time -- no, I never heard of it.

Q Did you tell Mr. Kaplan in your conversation with him on October 8, 1973, that the man that wanted the money was in the nut house?

THE COURT: I think that that comes within the ruling previously indicated, Mr. Duke.

Q Mr. Conforti, in your answer to Mr. La Rossa's question about whether you expected to go to jail, did you discuss with anybody in the United States Government what your answer to that question should be if you were asked such a question?

A I don't understand the question. If I could go to jail?

A No, that is not what he said. Read the question to him.

Q Did you discuss with anybody, either an agent or an Assistant United States Attorney what your answer should be if you were asked on the stand whether or not you expected to go to jail?

THE COURT: Do you understand what he is saying?

THE WITNESS: I think so.

THE COURT: He wants to know if you talked with anybody about what you would say if you were asked whether you --

THE WITNESS: Just tell him the truth what you know.

Q Specifically, I believe you testified in response to Mr. La Rossa, is whatever the Court decides. Did you discuss that precise testimony with somebody in the government before you testified?

MR. LAVIN: I object. I think the question is confusing.

THE COURT: He wants to know whether he had a talk with anybody who put words in your mouth about what you were to say --

THE WITNESS: I asked what will happen to me and I was told, it is up to the Court to decide your sentence.

THE COURT: Did anybody say to you that if you happen

to be asked in court about that subject, did they tell you what to say?

THE WITNESS: No, sir.

THE COURT: Did you tell them what you were going to say?

THE WITNESS: Yes,sir.

THE COURT: What did you tell them?

THE WITNESS: I told them it was up to the Judge and to the Court to decide if I go to jail or not. It is up to the Court to decide what happens to me.

Q Mr. Conforti, what restaurant did you make the call to Mr. Kaplan from?

MR. LAVIN: I object.

THE COURT: Overruled.

MR. LAVIN: Just the location.

THE COURT: Well, you may say what the locality is without giving the name or the address. What locality was it in?

THE WITNESS: Route 1 in Connecticut.

Q Were you en route from one place to another when you stopped at the restaurant?

A No, sir.

Q Mr. Conforti, did you tell Mr. Kaplan in substance that if he didn't come up with the money, he is going to be framed?

THE COURT: I think that we are in the same area that I had ruled on.

MR. DUKE: Very well.

THE COURT: The subject matter having been covered sufficiently in the Court's discretion.

MR. DUKE: The Court rules out the question?

THE COURT: I rule out that question.

MR. DUKE: Very well. Thank you.

THE COURT: Mrs. Rosner, do you have any questions?

MRS. ROSNER: Just a few questions, your Honor.

CROSS EXAMINATION

BY MRS. ROSNER:

Q Good afternoon, Mr. Conforti.

You told the jury that you engaged in this conversation with Mr. Kaplan at the behest of Mr. Spada; isn't that right?

A Yes.

Q When in point of time did you first see Mr. Spada after your arrest in April of 1973?

A It was some time during the Sperling case.

That's when I first saw him.

Q That would be during July of this year; isn't that right?

A I think so.

Q Where physically was Mr. Spada when you first saw him?

A Right in front of the court.

Q Where was he standing, on the steps or on the sidewalk or where?

A Well, you got the steps and you got the little street.

Q Yes, where was he standing?

A Then you got another little street after that.

Q You mean the island which separates the courthouse from the main street?

A Yes.

Q Was Mr. Spada standing on that island?

A No, just popped out of the cab. I assume --

Q I am sorry; go ahead.

A He just jumped out of the cab. He spoke to someone; and hopped right back in the cab and took off.

Q And did you recognize the gentleman whom he spoke to?

A No, sir, no, ma'am.

Q How long did he engage in conversation?

A A few seconds.

Q Where were you at the time you saw him?

A I was by a window in the bathroom.

Q On what floor of the building?

A Third floor.

Q Was anyone with you at the time?

A There was a marshal standing outside.

Q What was the marshal's name?

A I don't remember.

Q Did you report having seen Mr. Spada to the marshal?

A No, I think I told Mr. Lavin.

Q What time of the day was it when you saw Mr. Spada?

A Gee, I don't remember. I don't remember. It was during the trial.

Q Morning, afternoon?

A I think it was towards the afternoon. I'm not sure.

Q Was this a day when you yourself were testifying?

A I think I was preparing to testify, to go on the stand but I didn't go on the stand.

Q After this first occasion when you saw Mr. Spada,

how long was itbefore you contacted him?

A I think it was a day or so after.

Q Did youhave his number recorded some place?

A No, I didn't.

Q You did not?

A No.

Q In other words, you had it in your memory?

A Yes.

Q What was that number?

A I don't remember now.

Q Do you remember anything about it, the exchange?

MR. LAVIN: Objection, your Honor, irrelevant.

THE COURT: No, you may probe. Do you remember the --

A I think it was LE something.

THE COURT: LE something?

THE WITNESS: Yes.

Q When you called that number, did Mr. Spada answer the phone?

A Not at first, no.

Q Who answered the phone?

A I don't know. I just asked if Jack was there.

Q Was it a man or woman who answered the phone?

A A man.

Q Did he identify the number as being any business

location, a bar or restaurant of any kind?

A No, I think it was a public phone.

Q Do you know whether the public phone booth was on a street or located in some kind of business?

A No.

Q I am sorry you may have answered this and I may have forgotten but would you tell me again how long was it between the time you first saw Spada and the time you first contacted him?

A A few days after I saw him.

Q You knew at this time, did you not, at the time of this initial meeting, that Spada was a fugitive?

THE COURT: I think you have had that too.

A No.

MRS. ROSNER: It's a prefatory question, if I may, your Honor.

THE COURT: You can't prepare with duplication too often.

Go ahead.

A I knew I testified already on -- and I called him up and stated to that effect.

Q Testified -- I am sorry. Go ahead.

A I even told him that I testified against him.

Q That doesn't quite answer my question. You knew

that he was a fugitive at the time you saw him, did you not?

A I know that the government was after him, yes.

Q And you knew he wasn't around, didn't you?

A What do you mean by around?

Q I will withdraw that question. You knew that he was named as a defendant?

A Yes.

Q In the very case in which you were testifying, did you not?

A Yes.

Q And you knew that he was not seated at the table with the other defendants when you testified, did you not?

A Yes.

Q You came into court and identified people sitting at the defense table, didn't you?

A Yes.

Q And Spada wasn't there, was he?

MR. LAVIN: Your Honor, this is completely irrelevant.

THE COURT: It may be. I am just waiting to find out if there is a purpose to this.

A Jack wasn't there.

Q So that it's fair to state that when you saw him in front of the courthouse, as you say, some time in

July, you knew he was a fugitive?

A Yes.

Q Did you, prior to that time, employ the memory of his telephone number to reach him? Did you ever try to call him before seeing him?

A No.

Q You were cooperating with the government at that time, weren't you?

A Yes.

Q Your freedom was at stake, was it not?

A No, I am still out on bail.

Q You knew that the testimony which you were giving would aid you in reducing your sentence or perhaps avoiding any incarceration at all; didn't you know that?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Mr. Conforti, you were testifying to help yourself with criminal actions pending against you?

A Yes.

Q Weren't you?

A Yes.

Q And you are telling the jury that you knew where Jack Spada could be reached, and never gave that information to the government; is that your testimony?

MR. LAVIN: Asked and answered.

THE COURT: Answer it again.

A I called this number to --

THE COURT: No, no. Thisis the same refrain. You knew his telephone number and you didn't call him.

A When I dialed the number I hoped to get him.

THE COURT: No, before you dialed, before this time, she is talking about July of '73. You knew the numberand you didn t call him at that time?

THE WITNESS: Right.

Q Now, on the first occasion when you called Mr. Spada, did you tell him that he was named as a defendant in a case where you were testifying for the government?

A I told Jack that I just testified against him. I told him everything I did with him, and I told him "For you to run Herbie ain't worth it and for you to come into the court and speak to the DA."

Q In other words, you told Mr. Spada that you had just given evidence against him in a court of law where he himself was named as a defendant; is that right?

MR. LAVIN: Objection.

THE COURT: I will sustain the objection on the ground that it is repetitious.

Q Did Mr. Spada hang up on you at that point?

A He says "I know."

Q Did he then tell you that you should get in touch with Mr. Kaplan?

A Yes.

Q And ask him for money on his behalf?

A Yes.

Q Mr. Conforti, did the thought cross your mind that if you knew Spada's whereabouts, and you could give evidence not only that he engaged in narcotics activiites, but that he was attempting to threaten another individual?

A He wasn't threatening --

Q -- you might be able to persuade him to become an informant for the government?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did it ever cross your mind, Mr. Conforti, that your contact with Spada in July of 1973 might be useful to you in the same way that your testimony in court has been useful to you; did that thoguht enter your mind?

MR.LAVIN: Objection to the form of the question.

THE COURT: No, he may answer it.

A I called just so I could help him to --

THE COURT: She wants to know whether it crossed your mind that by turning him in that would be of some use

to you.

A No.

Q You never thought about that?

A No, I didn't.

Q Didn't you think that the government might be interested in learning Mr. Spada's whereabouts?

A I told the government that he's in Harlem.

Q You told the government he is in Harlem?

A Yes.

Q Who did you tell and when?

A Gee, I -- when --

Q Who did you tell, Mr. Conforti?

A I don't remember if it was Feffer or Mr. Lavin. I don't remember. I know I --

Q You might have told Mr. Lavin?

A I think so. I'm not sure.

Q Where would that have been?

A In one of the offices. I was going to so many offices at that time.

Q When was this?

A I think it was after the trial or during the trial. I don't remember.

Q When was it?

A I know his name came up. He said "Where's Jack, where could he be hanging around?"

I says, "In Harlem. I don't know a specific address or"-- I says I think "92nd Street around that area" but I never knew where he lived.

Q When was this with respect to the time you saw Spada, before or after?

A Gee, I don't remember. Could be before or after.

Q Did Mr. Lavin ask you how you knew where Spada was?

MR. LAVIN: I object to the form of the question.

THE COURT: Overruled.

Q Did he ask you that question as far as you recall?

A I don't think so. I don't remember. I know I couldn't offer him any evidence where his whereabouts was, that I knew he had an apartment in Harlem. That's about it.

Q You had a phone number where he could be reached, didn't you?

A It wasn't at his home. He told me it's in a public area.

Q You had a phone number where he could be reached, didn't you, Mr. Conforti?

A Through other people, yes.

Q And you reached him there yourself, didn't you?

A At the home -- I reached him, yes, I reached him.

Q But you never gave that number to Mr. Lavin when you discussed where you thought Spada could be found, did you?

MR. LAVIN: Objection to the form of the question.

THE COURT: We have been over that now several times.

Q I direct your attention to this first conversation which you had with Spada on the phone. Tell us what Mr. Spada said to you about the plan to ask Kaplan for money.

THE COURT: I think I am going to rule that out. We have been over that.

Q Did Mr. Spada suggest the figure of $20,000?

MR.LAVIN: Objection, asked and answered.

THE COURT: I think we have been over that too.

MRS. ROSNER: Most respectfully, your Honor, I don't think that question was asked and it is prefatory to a point I'd like to make.

THE COURT: Get to the next question. Leave that one out.

Q In your conversation of October 28th with Mr. Kaplan, Mr. Kaplan told you, did he not, that in messages that had been communicated to him he was told that $20,000 was demanded of him? Isn't that right?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did Kaplan tell you on October 28th, in your phone call with him, that he had been told someone was looking for $20,000? Was that figure mentioned?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did Kaplan say to you, "Three weeks ago and says to him if I don't get $20,000 I am going to frame you, Sammy, Vic and some other guy. Why do you people do this?" and did you answer him --

MR. LAVIN: Objection.

THE COURT: I am aware of the question. We went into this matter in the robing room. The objection is sustained.

Q How many conversations did you have with Mr. Spada over the telephone before the October 28th phone call to Mr. Kaplan?

A I think one.

Q Only one call?

A I think so.

Q Did Mr. Spada tell you during that conversation that he wanted $20,000 not to testify against Kaplan?

A Something like that. Something like that.

Q What did he say?

A You want the exact words?

Q To the best of your recollection as you sit here now, what did he say?

A He says, "Sammy Kaplan is one of Herbie's customers and that's the only way that I could try to get money from all his customers." And Sammy was one of them and the only way he could get to Sammy is through me, because my name came up with the government, I would tell him that I had dealings with Sammy.

Q In other words, even though Spada was a fugitive and wasn't appearing in court himself, he was going to get money to come to court to testify against anybody else, is that your testimony?

MR. LAVIN: I would object to this question.

THE COURT: Sustained.

Q When you spoke with Mr. Kaplan on October 28th you told him that he could forget the $20,000 figure, 10,000 would be good enough; didn't you tell him that?

MR. LAVIN: Objection.

THE COURT: Sustained.

I cautioned you about going into the subject after the robing room conference in view of the fact that there is nothing new in any of these questions.

MRS. ROSNER: I wish to make a point, your Honor, which I will make in this question.

BY MRS. ROSNER:

Q Did you have Mr. Spada's authorization to lower his demand from $20,000 to $10,000 or did you just do that on your own?

A He told me at the beginning to get 20,000. I told him he just got out of West Street and he is trying to work, that I don't think he can handle that kind of money.

He says, "Well, if you can't get 20, get 10. If you can't get 10, get as much as you can."

Q At the time of these conversations, Mr. Spada -- Mr. Conforti; I'm sorry -- you were under protective custody, were you not?

A Yes.

Q Which means that 24 hours a day --

A Yes.

Q -- someone employed by the federal government

is with you or very near you, isn't that right?

A Yes.

Q Did you discuss with Mr. Spada how Mr. Kaplan was going to get the money to you?

A Yes.

Q What were your arrangements?

THE COURT: I think we have had that too but I am going to letyou go into it again. Please do not duplicate the cross examination of somebody else on a collateral subject.

MRS. ROSNER: I am not attempting to, your Honor, I don't think.

THE COURT: You are even if you don't attempt to.

MRS. ROSNER: I don't think this was gone into.

THE COURT: Now, please, you are doing it even if you are not intending to do it.

Read the question to her.

(Record read.)

A Jack told me, he said in the future that he will let me know where to mail this money to, that he is going to put it under a phony name and an office box number because no one knew where I was supposed to be, where I

was located, not even Jack. Nobody knew where I was under protective custody.

Q How was Kaplan going to get the money to you?

THE COURT: Please, if you want to hear the answer.

MRS. ROSNER: I am sorry, Judge. I thought he finished.

Q Please finish, Mr. Conforti.

A And then for me to tell Sammy Kaplan that Jack is going to give me an address for him to mail the money to him, that he is going to get a phony name and get a box office number, and I would tell Sammy where to mail this money, he is supposed to mail it in a box.

Q Did Spada give you that informationduring your first conversation with him?

A No.

Q He did not?

A No.

Q You never gave such information to Kaplan, did you?

A I don't think so, no.

Q Did you have any conversations with Spada after your October 28th conversation with Mr. Kaplan?

A With Sam? I spoke to Sammy.

THE COURT: No. Did you talk to Spada again?

THE WITNESS: Yes.

BY MRS. ROSNER:

Q Didyou report to Spada the content of your conversation with Kaplan?

A Yes.

Q How long after the October 28th phone call did you do that?

A About a week or so after.

Q Which would be perhaps the early part of November, first week in November?

A Could have been before that. Could have been before that time. I know it was about a week and a half after.

Q After your October 28th conversation?

A Right.

Q What did you say to him and what did he say to you on that occasion?

A I told him that Sammy couldn't get that kind of money up, and that he was yelling "I was framed" over the phone. So he says, "I already contacted him and the rest is up to me, so don't worry about it."

So I told him, "If you mention my name," I was going to tell the truth on the stand, and I had told him that I told Sammy the same thing: if my name comes up I am going to testify to the deliveries I made with him and the deliveries that Jack made to Sammy Kaplan. I was going to let nothing -- in other words, I was going to tell the truth.

Q Mr.Conforti, were you going to be paid by Mr. Spada for your efforts on his behalf?

A No, because if I would have got paid from him I would have gave up my wife and my kids.

Q So you were just doing this out of good will?

A Well, I knew I hadn't mentioned Sammy's name to start with.

Q You were doing this without any promise of money?

A No.

Q From Mr. Spada?

A He just wanted to get money from all the customers, everything he could get. That was all he --

Q You were just helping Spada out, is that right?

A I got involved because my name was in the middle of this.

Q Let me -- sorry. I may be confusing you by my questions.

You helped Spada by making this phone call to Kaplan even though in your own mind you did not believe Spada was going to give you any money for it or you had no such understanding with him, isn't that right?

A No, I had no understanding whatsoever about money.

Q And you did this in October after you testified against Spada in a court of law, isn't that right?

A Yes.

Q You weren't helping him when you did that, were you, Mr. Conforti?

A He knew that and I knew it.

Q Did you ever call Mr. Kaplan again after your conversation, your second telephone conversation with Mr. Spada?

A No.

Q So to the best of your recollection as you sit here now, you had two telephone conversations with Spada?

A Yes.

THE COURT: Please go to something else.

Q In your phone conversation with Mr. Kaplan of

October 28th did you tell him that Ceil Mileto had put you into this thing?

MR. LAVIN: Objection.

THE COURT: What is the rest of the question?

Q Did you tell Mr. Kaplan, "Sammy, she put me in the hold and I am going to get out of it"? Did you tell him that?

A No, I don't think so.

Q I show you what's been marked Defendant's Exhibit Q-1 and direct your attention to the bracketed portion and ask you to read it to yourself.

A No.

MRS. ROSNER: I ask the court to direct the witness to read the bracketed portion.

THE COURT: I don't consider it appropriate to do so, it being a collateral subject.

THE WITNESS: Because a tape could always be erased.

Q Would it refresh your recollection to hear your words, Mr. Conforti?

A A tape could always be rigged.

MR. LAVIN: Objection, your Honor.

THE COURT: Please. Objection sustained.

A So no.

MRS. ROSNER: Your Honor, in light of the witness' answer I would ask --

THE COURT: I adhere to my ruling in the light of the witness' answer.

MRS. ROSNER: May I write out my objection, your Honor.

THE COURT: Yes, it will be received as Court's Exhibit 14.

MRS. ROSNER: Your Honor, may I show it to counsel before handing it up?

THE COURT: Yes.

Show it to government counsel before handing it up.

MRS. ROSNER: I'm sorry, your Honor.

THE COURT: Court's Exhibit 14, filed.

BY MRS. ROSNER:

Q Mr. Conforti, would it refresh your recollection to hear your conversation out of the presence of the jury?

A You may read something from the tape --

Q That's not what I am asking you, Mr. Conforti.

THE COURT: I ask you to recall the discussion on the law that we had in the robing room before this afternoon's session started. The entire matter is collateral, it is remote and in the exercise of discretion and the conduct of this trial I ruled this area out.

MRS. ROSNER: I amsorry, Judge, I thought this is one of the things you ruled in.

THE COURT: This is one of the things I just ruled out and I ruled it out before.

Q Did you tell Mr. Kaplan in words or substance

that you were in trouble because of Cecile Mileto's having told the authorities about you? Did you tell him that?

A Something like that, yes.

Q Something like that. And did you tell him that you would do anything to get out of the trouble you were in?

A No, I don't think so.

Q You don't think so or you don't remember, Mr. Conforti?

A I didn't know I was already in trouble. How could I say something like that.

Q That isn't what I asked you. Did you tell him you would do anything to get out of the trouble?

A I don't think so.

MRS. ROSNER: I have no further questions.

THE COURT: Mr. Peluso?

MR. PELUSO: I have no questions.

THE COURT: Mr. Mitchell?

MR. MITCHELL: I'm wondering, your Honor, with the conference, we have been sitting for two and a half hours. Could we have a recess of five minutes?

THE COURT: Are you going to be any length of time?

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MR. MITCHELL: Yes, I will finish the hour and go on.

THE COURT: All right, we will take a short recess.

(Recess.)

THE COURT: Mr. Mitchell.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Mr. Conforti, my name is Robert Mitchell. My client's name is Barney Barrett.

When you first saw Jack Spada it was at a time prior to your testifying at the trial here in June, is that right?

THE COURT: Mr. Mitchell, we have been through this subject and the witness testified he saw him during the course of the trial in July. Why do you ask that question?

MR. MITCHELL: I have a reason, your Honor, which -- I will skip the question --

THE COURT: No, no, no. Maybe you didn't hear what went on when the others were examining. He said he saw him from a men's room in a window during the course of a trial that was in progress in July, 1973.

MITCHELL: Before he testified.

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THE COURT: Before he testified?

Q Was that the trial that you testified at against Norman Goldstein or Sonny Gold?

A Yes.

Q The first trial you testified at?

A Yes.

Q You testified on June the 26th, that's when your testimony started, of 1973, so that you saw Jack Spada prior to that, is that right?

A No, I think I saw him, I think it was after I testified. It was during that time. I don't remember.

Q Do you remember or are you guessing?

A I think I testified -- I'm not sure.

Q You are not sure.

A Because when I called him up I told him I testified against him. He said he knew it.

Q How long after you testified against him did you call him up?

A A couple days after.

Q The first week in July of 1973?

A I don't remember.

Q You don't remember?

A No, sir.

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Q Where were you when you called Jack Spada for the first time?

A I was at a point where I was held in protective custody, myself and my family.

Q Not in New York?

A No, sir.

Q And then, if I get the sequence correct, your next call was to Caplan, is that right?

A Yes, sir.

Q You called Kaplan on October the 28th, 1973 and you had spoken to Spada the first week or two in July of 1973. Did you have to wait for a telephone approximately two months?

MR. LAVIN: Objection to the form of the question.

THE COURT: No, it would be quicker if you answer.

A First, I didn't call when Jack told me to. I had time to think it over. I told you I was doing Sammy a favor by doing it. So finally I decided to call Sammy.

Q Two months later?

A Yes.

Q You hadn't checked back with Jack Spada?

A No.

Q You didn't know whether Jack Spada had already

started the ball rolling by communicating with the authorities, did you?

A I didn't know.

Q When you said there is a man who is going to testify against you, Mr. Kaplan, you were referring to Jack Spada, is that right?

A Yes.

Q Did you tell Mr. Kaplan, Sam Kaplan on October 28, 1973 that they got a guy down there who wants to do some talking against you?

A First of all, I'm not sure if it is in October or that date. I know I called Sammy up.

Q You are not sure of the date?

A Right.

Q What is your best guess as to the date?

A I'm not sure if it is that date. I didn't mark it down on a piece of paper.

Q When you called Sam Kaplan, did you tell him that they got a guy down here that wants to talk against you?

A I think so.

Q Was that true?

A No, sir.

Q Did Spada tell you to lie in order to induce

Kaplan to give him 10,000 or $20,000?

A He says, build up a story that you can convince the man to give me the 20,000.

Q Did you believe Jack Spada when he said to you that he was going to do this?

A Do what, get money from other customers or --

Q Yes, get money from other customers.

A I knew he was a delivery -- he delivered --

Q Did you believe him, that's the question.

A Yes.

Q You did believe him?

A In a way, yes.

Q In a way. In a way no, is that right?

MR. LAVIN: I object to the form of the question.

THE COURT: Sustained as to form.

Q You believed him in part, is that correct?

A Pardon?

Q You believed part of his story?

A Yes.

Q Did you believe that he would turn himself in in order to try to collect money which he wouldn't get if he was inside?

A He told me he had nothing to loss by doing it.

Q Tell me, whose room were you in when you saw Jack

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Spada?

A I was in the men's room when I saw him.

Q What Assistant's room were you in before you went to the men's room?

A I think it was Mr. Lavin or Mr. Feffer's office. I know it was on the third floor.

Q When did you meet Mr. Mileto?

A I think it was in '64. I'm not sure.

Q 1964. Whenwere you convicted of a crime in California, what year?

A I don't know. I don't remember the date.

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Q You don't remember. When did Mr. Mileto get married, what year?

A I think it was in '64 or '65. I'm not sure.

Q Was he married when you met him?

A I don't think so.

Q When did Mr. Mileto go to jail?

A I don't remember.

Q Do you know what jail he was in?

A I think he was in Lewisburg Penitentiary.

Q Did Mrs. Mileto tell you he was in jail?

A After I got out of the service I remember going up to the jail to visit him.

Q Who told you he was in jail?

A His wife.

Q Did she come to you?

A Yes.

Q What year was that?

A I don't remember. I don't remember.

Q You don't remember; all right. When you went to visit him in Lewisburg did you sign in as a relative?

A Yes.

Q That was a lie?

A Yes.

Q You knew that only relatives could visit prisoners?

Is that right?

A He told me that --

Q I am just asking you. Did you know that?

A I can't answer that without an explanation.

Q Isn't there a sign over the book where you sign in saying it is a federal offense to state that you are a relative when you are not a relative?

A I don't remember that.

Q Who told you to lie?

A Louis says he spoke to one of personnel there to get me in there with his wife.

Q Whatdidyou speak to Louis before you went there?

A No, I asked his wife, "How do I get in?"

He says that he filled an application for me to come in. So I just signed it.

Q Did his wife tell you to say you were a relative?

A I don't remember.

Q During the period of time that Mr. Mileto was in Lewisburg, was his wife addicted?

A Not that I know of at the beginning, no, I don't think so.

Q Was she addicted at any time that you knew?

A Yes.

Q Was she coming around to you for money for drugs?

A Well, any time she asked me, she says it was for the kids. She never said "I need money for drugs."

She said, "I need the money to feed my kids."

Q Did you ever tell anybody you gave her $85 for drugs?

A I don't think so.

Q Did she come around to the condition where you could see she was under the influence of drugs?

A She come down a little sloppy but I never knew her to be --

Q Was she always a sloppy woman?

A No.

Q How many times a week did she come to you for money?

A Sometimes once, sometimes twice, and then she dont' come for a couple of weeks.

Q At that time, when she first came to you for money, was that when you went to Lewisburg with her?

A I don't remember. It could have been after. I don't remember.

Q What sort of work were you doing at that time when you went to Lewisburg?

A I think I was just about to get the gas station. I was in the gas station.

Q In the gas station?

A Yes.

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Q When did you buy the gas station?

A I think in '70.

Q What month in 1970?

A I don't know. I think it was in the beginning of the year. I don't know what month.

Q How many gas stations did you buy in your lifetime?

A I didn't buy this. I leased it out.

Q You leased it out?

A Just one.

Q How many gas stations have you leased?

A One.

Q How old are you now?

A 26.

Q You can't remember when you signed the first lease for a gas station?

A Not at thepresent time, no.

Q Have you always had a bad memory?

A For names and dates, yes.

Q How about for amounts?

A I don't understand the question.

Q What? You don't remember names and dates?

MR. LAVIN: Objection. That wasn't his testimony.

MR. MITCHELL: I will reframe it.

Q Do you remember figures?

A Yes.

Q You have a good memory for figures, right?

A Majority of the times, yes.

Q What?

A Majority of the times, yes.

Q When don't you have a good memory for figures?

A I don't know.

Q How much did you pay for the lease?

THE COURT: What lease? What lease, Mr. Mitchell?

Q For the gas station.

A From Getty itself -- you buy the lease from them. I think it is 400 -- between 400 and 600.

Q How much did you pay the owner of the station?

A I think it was close to 7,000.

Q Close to 7,000. How much money did you put down?

A I don't remember. It could have been a few thousand. I don't remember.

Q You remember testifying to an amount in June?

A No, sir.

Q You don't.

A No, sir.

Q Have you forgotten what your testimony was in June?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q You say that you purchased the gas station in the early part of '70; is that right?

A I said I don't remember.

Q You don't remember. Could it have been?

A I don't know the date.

Q Could it have been '69?

A Could have been towards the end of '69 or early '70.

Q Do you remember saying that you paid $3500 down?

A No, sir.

Q Do you remember saying you paid $2500 down?

A I don't remember anything on that.

Q You don't remember anything like that.

A On that testimony in June.

Q You don't remember any of the testimony in June?

A I remember some of it, yes, but not this, the gas station.

Q Do you remember the things that the agents and the U.S. Attorney went over with you?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q If I told you that you said back in June that you paid $2500 down would that refresh your recollection?

MR. LAVIN: Objection.

THE COURT: Overruled.

Does that help remind you of anything if Mr. Mitchell says that?

THE WITNESS: Your Honor, if it is on the paper, I agree with him but I don't remember. If it is on the -- if I said 2500, at the time, yes.

THE COURT: You don't have any present memory of the details, is that right?

THE WITNESS: Yes, your Honor.

THE COURT: Let me understand this. Was this a purchase or a lease?

THE WITNESS: It was a lease and a purchase both.

pm

Q Tell me, we will get nearer to today, what year did you go to Florida.

A I think it was at the end of '72.

Q What was that? I didn't get it.

A I think it was towards the end of '72.

Q What month?

A I don't remember.

Q Was it December of 1972?

A It could have been. I don't remember. I know it was cold.

Q Could it have been November of 1972?

A The only thing I remember is when they had the big snow storm in North Carolina. It was the first time in 20 years.

Q What did you do, drive down?

A Yes.

Q Did you get stuck in the snow storm?

A Yes.

Q How long did you stay in Florida?

A Close to two weeks.

Q How long were you away from New York altogether?

A Around two weeks.

Q You went down alone, didn't you?

A With my family.

Q You weren't with your family? Tell me, when did you make the trip to Las Vegas?

A In August.

Q Of what year?

A I think it was in '71.

Q Was that before Mileto came to your station or after he came to your station with all those packages?

A I think he got rid of the packages first and then the new owners started handling the station.

Q This was in August of 1971?

A Around that time. My best recollection.

Q When did you sell the station, what month?

A The later half.

Q What?

A Towards the end of August.

Q Towards the end of August?

A Right.

Q When did Mileto come to you with the packages?

A At the end of June, beginning of July. Beginning of June.

Q So that you kept the packages for at least two and a half months in your station?

A Yes, sir.

Q When he first came to you did he ask for space to store those packages?

A He just came up with the packages.

Q And was there a discussion about storing them?

A He says, "I want to leave some packages in the back stockroom."

Q At that time did you agree to let the space to him, lease it?

A Lease? No.

Q Let it?

A I don't understand by let.

Q Do you remember being asked, page 1721 of the transcript of the previous trial:

"Q Did he pay you?

"A And I agreed to let it"?

You tell this jury what you meant by it.

A Louis came up to the station with some stuff. He says, "Joe, is it all right if I leave the stuff in the station?" Told me it was numbers.

Q I know that. Tell us what you meant by "And I agreed to let it."

THE COURT: He is telling you.

A And I agreed to let the packages stay in the

station.

Q Is that what you mean?

A Yes.

Q Next question -- or I will withdraw it.

At that time did he pay you?

A I'm not sure. I know I got money when I found out what it was.

Q You didn't find out when he put the packages in, did you?

A No, sir.

Q How long afterwards did you find out?

A A short while after.

Q How long?

A Could be a few days, if I remember.

Q Did you get paid before you found out?

A I'm not sure. I know that I got money on one of the payments when I found out what it was.

Q After you agreed to let it, did you get paid for keeping it there, right there and then?

A I think he paid me once, yes.

Q At the time he put it into the station did you get paid?

A No.

Q You remember testifying, page 1722:

"Q Did he pay you for keeping those packages?

"A Yes, sir.

"Q Did he visit that garage often while those packages were there?

"A Yes, sir"?

Does that refresh your recollection as to whether you got paid immediately or not?

A I know I got paid soon after I found out what it was.

Q I am asking you whether you got paid as soon as he left the packages.

A No.

Q You are saying no?

A I don't think so. I don't think he gave me money because I was doing him a favor by putting the packages.

Q I amnot asking you what you think.

THE COURT: Please don't argue with the witness.

MR. MITCHELL: I am sorry, your Honor.

Q Did you ask him what the white powder was?

A Yes.

Q And then he gave you money?

A After he told me what it was.

Q Did he give you money after that?

A Yes. As far as I remember, yes.

Q Was that the first time that you got money or demanded money to conceal something?

A I never demanded money.

Q Was that the first time you got money to conceal something?

A I think so, yes.

Q And when you called up Mr. Kaplan did you demand money?

A Not for myself.

Q Did you demand money for anybody?

A Yes, I did.

Q Now, at some point did you ask him for money for keeping it there?

THE COURT: I think you have exhausted that subject. Will you please go on to something else.

BY MR. MITCHELL:

Q Tell me, how much money did you get in all before you removed the four packages to your house?

A A few hundred.

Q Wasn't there one occasion where he gave you two and then three?

A I told the amount I got from him was about --

Q $500?

A Around that area.

Q And then you brought it to your house, right?

A What's that?

Q The four packages.

A We brought it to my home, yes.

Q Was his wife along at the time?

A No, she was in the hospital.

Q What?

A I think she went to the hospital.

Q No, his wife.

A His wife went to the hospital.

Q She never showed up at your station with him?

A Many times.

Q Was she there the day that he loaded the car to move the stuff to your house?

A I think so because sometimes he will tell her to take a cab to go to the hospital, take a bus to go to the hospital.

Q On the occasion whenyou moved the stuff out, you were very -- I will withdraw that.

You were very anxious to get it out of your station, weren't you?

A Yes, because at that time people started coming in.

Q Did you introduce Mileto to anybody as your partner?

A Yes. The new people that owned the station.

Q Was he your partner?

A No.

Q Then there came a time where the packages were removed from your house, is that right? One at a time? Or two at a time?

A One at a time.

Q What?

A One at a time.

Q And on the second occasion did he call you

up and ask you to bring the package to him?

A Yes.

Q And you refused,right?

A Right.

Q And you made him come to the house, right?

A Yes.

Q And you threatened him at that time with throwing the packages away down the sewer or something?

A I think it was the last package I threatened him.

Q Did you threaten him with something at the time when you didn't want to deliver the package?

A I don't think so.

Q Did you say he would have to get it all out?

A I told him at the time when he came to pick up the package that"I didn't like the idea every time you call, I jump." I was going out with the family then. So my wife thought I was going to stay home and wait for him. So when he called I told him no, he come down and pick up the package.

Q Did you then tell him what you were going to do with the other two packages?

A I don't think so. Mostly the argument

was about me not delivering it to him.

Q And as a result he paid you money, is that right, at that time?

A I think so.

Q How much did he give you then?

A He always gave me a hundred, 200.

Q How much did he give you on that occasion?

A I don't remember.

Q Wasn't it $300?

A If it was -- if it's on that thing.

Q The reason he gave you the $300 is because you threatened to do something, right?

A I don't think so.

Q You don't. Tell me, on the third occasion did you threaten to throw it down the sewer?

A I don't think so, no.

Q On which occasion did you threaten to throw it down the sewer?

A On the third occasion the package was going to be delivered to Brooklyn. On the last package I threatened to get it out of my house.

Q Throw it down the sewer, did you use the term "sewer"?

A Yes, if I remember right.

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Q He gave you money at that time, right?

A I don't think so.

Q How much money did you get from Louis Mileto before the end of 1971?

A A few hundred.

Q What?

A A few hundred.

Q You got 500 at the station and you got 300 at the house when you wouldn't deliver the second package, so that's 800. After that and before the end of the year didn't he give you more money?

A No, sir.

Q When you helped him with the cutting?

A No, sir.

Q Didn't give you any more money?

A I don't think so.

Q You got the 800, though. Did you declare it in your income tax for the year 1972, the $800?

A No, sir. If it's 800, it's on there, I didn't declare it.

Q Tell me this: How much were you earning in the gas station?

A Depends on the business.

Q What?

A Depends on the business.

Q How much were you taking out a week?

A Sometimes 100, sometimes 150, sometimes 200.

Q You weren't declaring it, were you?

A Yes, sir.

Q All of it?

A All on my income tax.

Q All on your income tax, every bit of it?

A When I had the station, my accountant filed it. When I had the station, because he had the station, my records and books. And I had to declare for what I am earning. He takes the checkbook out. I remember declaring what I had from the station.

Q Do you remember testifying in answer to a question, "As far as narcotics, your gas station, your employment, anything, how much money would you say you earned," do you remember giving this answer:

"On the books I put myself for 250 a week plus a couple hundred that I would take that Uncle Sam don't know about. You know when you are in business you take a little bit, you don't put everything down on the books."

Do you remember testifying to that?

A I think so.

Q In other words, it was okay to defraud the United States Government on your station, is that right?

A To answer that, I did take money from the books.

Q And you didn't declare it?

A Not the money I took. It wasn't that much any way to declare.

Q But you took it with the intent to defraud the government of the United States, is that right?

A No, sir.

Q You said you would take it, Uncle Sam wouldn't know about it, isn't that right?

A Yes, sir. That would go for petty cash in the business.

Q I don't care what the amount is, you just stole it from the income tax, is that right?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q You didn't declare it in your income tax, is that right?

A Yes, sir.

Q Tell me, was there ever a time through this entire narcotic business were you ever asked for any money?

A I don't understand the question.

Q Well, you told us that Herbie gave you $2,000, is that right?

A Yes.

Q Did you ask Herbie for some money or did he just --

A Gave it to me.

Q He just gave it to you? And when somebody else, was it Spada, gave you money --

A Herbie gave it to Spada. Spada gave it to me.

Q Did you ask for that money? Or was it just given

to you?

A Herbie let me know that Jack's got money.

Q I know but I am asking you, did you ask Herbie for money?

A No, sir.

Q As a matter of fact, you didn't need any money, is that right?

A I don't understand that question.

Q Well,didn't you tell us back in June that you didn't need any money, that is why you never asked for any money?

MR. LAVIN: Objection to the formof the question.

THE COURT: Do you recall so testifying?

THE WITNESS: I don't think so, your Honor.

Q Do you remember being asked a question, how much you got paid for mixing and you gave an answer, I made about eight or nine mixes in September of '72. Sperling gave me, I think it was a thousand or two thousand, and handed me the money and I said, I don't need it, I don't want it.

Did you testify to that?

A I think so.

Q Was it true?

A At the time I was earning money from the pizza store.

Q You were earning money from the pizza store?

A Yes.

Q How long was the pizza store in operation before it was sold?

A Shortly after he gave me the money it was closed. About a month, two months after.

Q How long was it running?

A A few months.

Q When did you open it up?

A In the beginning of September.

Q When was it closed?

A A few months after.

Q Wasn't it closed in November?

A Around that time.

Q You weren't making any money in the pizza place, is that right?

A The only thing I earned from the pizza store was 200.

Q 200 a week. But there wasn't enough income to pay you 200, was there?

A That is right.

Q What?

A Yes.

Q I asked you before whether in your dealings with Mr. Mileto you ever demanded money from him. Do

you recall that?

A Yes.

Q And you answered no.

A I never demanded money from the man.

Q Never demanded. Page 1871.

"Q Didn't you demand money from Mr. Mileto?

"A Yes, sir."

Did you demand or didn't you demand? Yes or no.

Q You told us that when you mixed, you never got paid except when Herbie gave you 2,000 on one occasion and somebody else gave you 2,000 on another occasion, is that right?

A I don't think so.

Q What?

A I don't think that is -- that is incorrect.

Q Well, tell us what is correct.

A On what occasion do you want to know?

Q What?

A I don't hear you.

THE COURT: He wants to know what occasion you are referring to.

Q All right, during the period where you were the mixer --

THE COURT: Are you going to be some time yet,

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Mr. Mitchell?

MR. MITCHELL: I will be possibly two, three hours?

THE COURT: Yes. We will take a recess and perhaps you might examine your papers and maybe we can shorten it tomorrow.

Ladies and gentlemen, we will take a recess now until tomorrow morning and in the endeavor to get started on time, I am going to make it 10:15 and I won't excuse anybody for being late.

Please, do everything you can to get here on time. You are excused for the afternoon.

(Jury excused.)

THE COURT: Mr. Mitchell, I want to call your attention that you represented to me that you were going to be a half hour. Good night, gentlemen.

MR. MITCHELL: Your Honor, I was talking of 5 o'clock when I said I would be another half hour.

THE COURT: I know you were talking about 5 o'clock. You asked for a recess and you said you were going to be for a half hour. Now you have expanded two two or three hours. If it is proper, we will devote the time. If it isn't proper, I will deal with it tomorrow.

(Adjourned to Friday, December 28, 1973, at 10:15 a.m.)

UNITED STATES OF AMERICA

vs.

BENJAMIN MALLAH, et al.

New York, December 28, 1973

10:00 a.m.

Trial resumed.

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(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen.

J O S E P H C O N F O R T I resumed.

CROSS EXAMINATION CONTINUED

BY MR. MITCHELL:

Q We stopped yesterday at a point where I was asking you whether you recall how often you got paid for mixing. You mixed for Mr. Mileto on how many occasions?

A I think one occasion.

Q One occasion. And how many times did you mix for Mr. Sperling and the other people with him?

A Over two dozen times. Could be more or less.

Q Did you get paid on any regular method like every week, every month?

A No, sir.

Q How did you get paid?

A Whenever Herbie gave me the money I took it.

Q Well, was there any -- after a mix,did Herbie pay you after each mix?

A No, sir.

Q After every two mixes, did he pay you?

A No, sir.

Q Do you remember testifying in June of this year at a trial?

A Yes, sir.

Q Page 1894, starting on 1893:

"How many times did you cut and mix alleged heroin?"

And then skipping over:

"I don't remember. I can't give you an exact figure.

"More than once?"

"Yes."

"More than five times?"

"Yes."

"More than 10 times?"

"No, it wasn't more than 10 times."

"Did you get paid on each occasion when you cut the mixed heroin?"

"No."

"Did you get paid every second time?"

"No, sir."

"Did you get paid every third time?"

"I would mix and get paid about a week or a week and a half later."

Did you tell that to a jury in June of this year?

A Yes, sir.

Q You told us here today that there was no payment after mixes, is that right?

MR. LAVIN: Objection.

THE COURT: Sustained. Is there any inconsistency between his present testimony and what you have read?

MR. MITCHELL: I see it, your Honor.

THE COURT: We will leave it to the jury to decide that.

BY MR. MITCHELL:

Q When for the first time did you know that Mileto had left narcotics with you?

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A I believe it was on the last package I delivered.

Q When you found the white powder, do you remember that?

A Yes.

Q That was back in when, August or September of '73?

A Around that time.

MR. LAVIN: Objection.

THE COURT: I suppose the objection is on the basis we have been over this area, is that what you are talking about?

MR. LAVIN: Yes.

THE COURT: Maybe it's a preliminary question.

Q Did you smell the powder?

A No, sir.

Q Did you put it to your lips?

A No, sir.

Q What?

A No, sir.

Q Did you rub it on your skin?

A I felt it.

Q You felt it?

A I felt it.

Q You felt it?

A Yes.

Q Did you get any sensation when you felt it?

A No, sir.

Q Did you ask Mrs. Mileto what the powder was?

A No, sir.

Q Are you sure of that?

A Yes.

Q Didn't Mrs. Mileto come around to your station without her husband on many occasions?

A Sometimes.

Q And you never asked her what the powder was?

A No, sir.

MR. LAVIN: Objection.

Q Did you know where the narcotics came from, did Mileto tell you?

A No, sir.

Q Mileto told you that the items that you stored in your house were heroin, is that right?

A No, sir.

Q It was heroin?

A No, sir.

Q At any time?

A He told me it was mix.

Q It was mix?

A Yes, sir.

Q At any time did he tell you it was heroin?

A After I delivered the last package, yes.

Q What did he tell you?

A It was heroin. Mixed heroin.

Q Mixed heroin?

A Yes.

Q And did you have an argument with him?

A Because I found out he was delivering heroin to a customer that night.

Q Well, he had previously told you it was mix for heroin, is that right?

A Yes, sir.

THE COURT: It was what?

MR. MITCHELL: Mix.

THE COURT: There was a preposition in there, mix for heroin?

MR. MITCHELL: The mix that was used to cut the heroin.

Q Is that right?

A Yes.

Q And then on this night he told you that it

was actually heroin itself?

A He told me it was mixed heroin.

Q Mixed heroin?

A Yes.

Q What did you understandhim to mean?

A Mixed heroin it's already cut, it's not pure.

Q In other words, you had been storing mixed heroin in your house but you didn't know it, right?

A Yes.

Q When was that that you found out for the first time you had been storing mixed heroin?

A Around January.

Q Of 1972?

A '73.

Q '73?

A Yes.

I think it was '72.

Q Don't you remember?

A It was a few days after I found out he got arrested. On February 10, '72.

Q It was a few days before he was arrested?

A Yes.

Q When for the first time did you hear the name Herbert Sperling?

A About a few weeks after he got out of prison.

Q Before he stored the stuff?

A Yes.

Q He told you all about Herbie and himself, right?

A He told me that he met --

Q Just tell me yes or no.

MR. LAVIN: Objection.

THE COURT: I will sustain the objection as to form. I don't think it is specific enough.

Q After that, when for the next time was the name Herbie mentioned?

A After I found out what the white powder was.

Q That would be in February of 1972?

A No, sir.

Q When?

A It was around the end of June, beginning of July.

Q The end of June or the beginning of July was after you found out what the white powder was?

A It was around that time.

Q I thought you told us before that you -- I will withdraw the question.

When did you ask Mileto to meet Herbie, what period of time was it?

A It was about the end of August, '71.

Q End of August of '71?

A September, around that area.

Q Before you sold the gas station or after you sold

the gas station?

A It was after the stuff was out of the station.

Q Did you meet Herbie the next day?

A I'm not sure if it was the next day, because I --

Q When in what month did you first meet Herbie?

A I don't remember. I know it was close to the Christmas holidays.

Q Did you actually meet him or did Mileto point somebody out to you as Herbie?

A First he pointed him out and then I met him.

Q When did he point him out, what month?

A The end of August, the beginning of September.

Q That is when he pointed him out?

A Around that time, yes.

Q And then how long -- that was before you sold the station, right?

A That I met Herbie?

Q No, that he was pointed out.

A I think it was after I sold the station.

Q Which would be, according to you, some time in August or September, right?

THE COURT: Mr. Mitchell, please.

MR. MITCHELL: All right.

Q When did he point him out, what month?

A I don't remember. I know it was close to the Christmas holidays.

Q How long after he pointed him out did he introduce you to him?

A The next day or so.

Q And did you do anything for Herbie at that time?

A Yes.

Q What did you do for Herbie before Christmas?

A He bought some Christmas toys in Harlem and I had to rent out a truck for him to pick up the Christmas toys with him and Louis, stored the Christmas toys in Louis' home.

Q Did you deliver the toys?

A I picked up the toys and I delivered to Louis' home.

Q What did Herbie give you for playing Santa Claus?

MR. LAVIN: Objection.

THE COURT: Mr. Mitchell --

MR. MITCHELL: I will withdraw that.

THE COURT: Please don't do that. You are an old time experienced lawyer. You shouldn't do that.

MR. MITCHELL: I am sorry.

Q What did Herbie give you for delivering the toys?

A I think he just paid for the rental of the truck.

Q Didn't you get a television set?

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A Not for delivering the toys. I received the television set after, yes.

Q When?

A Just before the holidays.

Q What did you do for Herbie that caused him to give you a television set?

A Louis told me that he --

Q I am not asking you about Louis.

What did you do for Herbie? What did Herbie ask you to do?

A I still don't -- I don't understand the question.

Q Did Herbert ask you to do anything before Christmas other than the truck delivery of the toys?

A Herbie knew what I was doing for Louis.

MR.MITCHELL: Objection, your Honor.

THE COURT: Strike that out.

Q Did you do anything between the time you first met Herbie and the time you received the color television set for Herbie?

A Yes.

Q What did you do?

A I held a machine gun for him. His wife gave me.

Q I didn't get it?

A On the night he got arrested with Louis, they got

arrested for a pistol charge. His wife threw out a machine gun out the window. I think -- I went to Louis' home with the agents or whoever arrested him that night and it turned to be I held the machine gun for Herbie.

Q Did you tell any agent of the United States that you had helped to conceal a machine gun when they were arresting somebody?

MR. LAVIN: Objection to the form of the question.

THE COURT: We will allow it.

Q Did you tell any agent of the government about this?

A I don't think so.

Q Did you tell Mr. Lavin?

A Yes.

Q When did you tell Mr. Lavin?

MR.LAVIN: Objection.

THE COURT: Yes, sustained.

Q When you told Mr. Lavin, did he make motes of it?

A I don't remember.

Q When was Herbie arrested?

MR.LAVIN: Objection to the form.

THE COURT: Overruled.

Do you know the date?

THE WITNESS: No, your Honor.

Q How long did Herbie remain in jail?

A A few months, I think.

Q When did you first meet Mileto after he came out of prison in 1971 from Lewisburg?

MR. LAVIN: Asked and answered.

THE COURT: Sustained.

Q Was Mileto arrested again in 1971 after he came out of prison?

A I think he was arrested with Herbie.

Q When?

A I don't remember.

Q Wasn't Herbert Sperling in jail until after Christmas of 1971?

A Gee, I don't remember. I don't know.

Q You dont know?

A I remember taking pictures of his home when he was in jail and we used to mail the pictures to Herbie.

Q Weren't there Christmas wreaths on the windows and the door in the picture?

MR. LAVIN: Objection.

MR. MITCHELL: If he remembers, your Honor.

THE COURT: I think that this is too remote . Sustained.

Q At the time that Herbie was pointed out to you, as you say, where was that, on Seventh Avenue?

A Yes, sir.

Q That first time was anybody else pointed out to you?

A I don't think so.

Q When you say you were introduced to Herbie, were you introduced to anybody else at that time?

A No, sir, I don't think so.

Q At that time when you were introduced to Herbie, did he ask you to go to work for him? Just yes or no.

A I can't answer that, sir.

Q Did he ask you to hang around on Seventh Avenue and 54th Street at that time when you were introduced to him?

A Yes, sir.

Q He did?

A It was right after I met him I started hanging around.

MR. MITCHELL: That is not responsive. I ask that it be stricken. I think it's directly responsive to the particular question you asked. You may have had another one in mind but the one you asked he responded to.

Q Did Herbert ask you to hang around? Just yes or no.

A I can't answer that.

Q Wasn't it your own idea to hang around? Didn't you testify to that in June?

MR. LAVIN: Objection, your Honor. He hasn't even answered the question yet.

THE COURT: If you want an answer to the question you have to wait until you give him a chance to answer.

MR. MITCHELL: All right, I am sorry.

THE COURT: Let us start again. What is your question?

Q Didn't you go around to Seventh Avenue on your own; it was your own idea?

A No, sir.

Q You are sure of that?

A Sometimes I'd be called to go down.

Q Before you were called to go down, before February of 1973, when Mileto was arrested, did you go down and hang around Seventh Avenue on your own?

MR. LAVIN: Objection to the form of the question and the date.

THE COURT: He may answer that. Just to make it clear, you are not talking about the period after that.

Q The period after the introduction?

THE COURT: Let us make it clear. After you were introduced to Herbie, and before Herbie was arrested, were you hanging Seventh Avenue on your own?

THE WITNESS: No, sir.

THE COURT: Or were you there by investigation of anybody?

THE WITNESS: I was there on investigation from somebody.

THE COURT: Go ahead.

Q Page 1943:

"Q Did you start to hang around 54th Street before Mileto was arrested?

"A Yes, sir.

"Q Did anybody ever ask you to come over to Seventh Avenue before Mileto was arrested other than Mileto?

"A I don't know. I don't remember.

"Q You say that you started to hang around on Seventh Avenue before Mileto was arrested?

"A Yes, sir.

"Q At whose request?

"A My mind.

"Q What?

"A My own self.

"Q Your own?

"A Yes."

Was that testimony in June truthful?

MR. LAVIN: Objection, your Honor, form of the question.

THE COURT: He may answer.

A Yes.

Q Was it your idea that if you hung around you could supplant Mileto?

A I don't understand that question.

Q Was it your idea in hanging around Seventh Avenue that if you hung around and you did things for Herbie, maybe Herbie would take you and you would have Mileto's position?

A No, sir.

Q On the night that Mileto was arrested, which was the 10th or 11th or 12th of February, 1973, did Mileto tell you to call anybody if he didn't get back?

MR. LAVIN: I object only to the date in the question, it is '72.

MR. MITCHELL: '72, I am sorry.

THE COURT: Are you asking him whether on that night he said?

Q On that night before Mileto left, did he give you instructions about whatyou were to do if he didn't come back?

A No, sir.

Q Just yes or no.

A No, sir.

Q Wasn't there a call to the apartment from Herbert Sperling that night?

A No, sir.

Q Was there a call from Mrs. Mileto?

A No, sir.

Q You on your own then called Herbert Sperling?

A Yes, sir.

Q Shoftly after that, did you tell Herbert Sperling that the car that Mileto was driving the night he was arrested was not a car that couldn't be traced but was your

car?

A The night he was arrested?

Q After that did you have a discussion with Sperling in which you informed him that Mileto had been using a car that could be traced?

A Which car are you referring to?

Q Any car. Didn't you tell Sperling that?

A I still don't understand the question.

Q Before Mileto was arrested or shortly thereafter, did you on your own tell Herbert Sperling "You know, Mileto has been driving a car that's traceable. I gave him that car."

Did you tell that to Sperling?

A Well, there's two cars involved you are talking about.

Q All right, about either of the cars. Did you tell him that?

A Yes, I gave him a Ford.

Q What?

A I gave him a Ford.

Q What?

A I gave Louis a Ford.

Q Did you tell that to Sperling?

A Sperling and I spoke about it, yes.

Q Yes.

A But it's a different car that he was with the night he was arrested.

Q But you told Sperling that he was using a car that could be traced,didn't you?

A Herbie told me; and I asked him what car and he says a black Ford. I told him that's mine.

Q Didn't you bring up the conversation?

A THE COURT: Wait a minute. Let him finish the conversation, will you?

MR. MITCHELL: I am sorry.

THE COURT: How far did he get?

(Last answer read.)

THE COURT: Yes? Finish your answer.

A Herbie told me Louis says that he got this car, he is going to use it junk, and Louis told him that it can't be traced. So I told Herbie that's my car he he's got.

Q You helped Mileto along with Herbie, right?

A I gave this car to Louis for his wife, because at that time Louis' wife didn't have a car.

Q All I want to know is, did you tell Sperling that it was your car?

MR.LAVIN: Objection, asked and answered.

THE COURT: Sustained.

Q When you were arrested in April, April 14th, was that, of 1973?

A Yes, sir.

Q You immediately started cooperating with the agents and with Mr. Velie and made statements; is that right?

A No, sir.

Q When was it, the next day?

A I got arrested at 5 o'clock in the morning. It was some time in the evening.

Q Some time the same day?

A Yes.

Q I am interested. Did you start cooperating? Did you start telling them everything that had happened?

A I didn't tell them everything that was happening.

Q Did you leave out any things?

A Yes.

Q Did you leave out something on Sam Kaplan?

A Yes.

Q So that the story you told the government at that time was partly true?

I will withdraw it.

Did they ask you about Sam Kaplan?

A I think his name come up, yes.

Q You told them that you know nothing about what

he did; is that right?

A Are you talking about the night I got arrested?

Q Yes.

The night you were arrested.

A The night I got arrested they wanted to know where I got the stuff from in the car and I explained that I was -- who --

Q I am interested in --

THE COURT: Now, please.

MR. MITCHELL: I am sorry.

THE COURT: You cut off his answers and you are talking at cross purposes.

Now go ahead and finish your answer.

A They wanted to know what was this stuff that was in my car. I told them that I was working for Herbert Sperling and then they wanted to know who was the people involved around me. So I told them Herbie, Sonny Gold, Jack Spada, the people I mixed with and dealt with.

Q Did you mention Barney that night?

A No, sir.

Q You testified before the grand jury, didn't you?

A Yes, sir.

Q In the matter in which you were indicted with Sonny Gold and Herbert Sperling, among others; is that

right?

A Yes.

Q When you testified before the grand jury, did you mention Barney?

A No, sir.

Q By the time you testified before the grand jury, had you been shown pictures which were taken of people up and down Seventh Avenue?

A Some pictures.

Q How many pictures?

A I don't know.

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Q Didn't they show you approximately 100 or 150 pictures?

A They didn't hardly show me any pictures.

Q What? They didn't show you any pictures?

A They didn't show me that amount of pictures. They showed me like pictures of Sonny Gold. "Is that Sonny Gold?" I says yes.

"Is that Jack Spada?" I said yes.

Q Did you indicate to them in any picture, "This is Barney"?

A I had told the district attorney about Barney coming to the apartment and mixing, yes.

Q When?

A I think it was in -- the time I was talking with them.

Q When was that, the night after you were arrested?

A No, this is way after.

Q When, after you testified here in June?

A I think it was during the time that they had me come in for questioning.

Q Before you testified before the grand jury?

A I think it was after that. I told Mr. Lavin about Barney.

Q You told Mr. Lavin about Barney.

A Yes.

Q When?

A I don't remember. It was during the time that they were questioning me.

Q Did Mr. Lavin or any of the agents take notes at that time of what you were saying about Barney?

A I know they were taking notes. I never saw the notes.

MR. MITCHELL: Will your Honor bear with me for a minute?

MR. LAVIN: May we have these marked as a court's exhibit, your Honor, my notes?

(Court's Exhibit 15 marked.)

MR. LAVIN: Just for the record, some of these are mine, some of them are Mr. Neslan's. Some of these are --

MRS. ROSNER: I am going to object to this in front of the jury, your Honor, on behalf of my client.

THE COURT: There is no harm in marking a court exhibit and handing a paper up to the court.

MRS. ROSNER: Not to the marking, your Honor, to Mr. Lavin's statement.

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MR. MITCHELL: Your Honor, may I see the exhibit?

THE COURT: It's a court's exhibit. I will look at it and make a determination about it.

Q When you testified at the first trial in June, when you were mentioning the occasions on which you met Sonny Gold, did you tell the jury or before that did you tell any agent or Mr. Lavin --

MR. LAVIN: Objection to the form of the question.

MR. MITCHELL: All right, I will break it down.

Q At the trial did you testify that there was an occasion where Sonny Gold came up to an apartment in the 50s where you were with Jack Spada?

A I don't think so. I don't think I was ever asked.

Q Weren't you asked everything that Sonny Gold did?

A As far as I --

MR. LAVIN: Objection, your Honor.

THE COURT: I think what you really mean is weren't you asked about everything?

Q Weren't you asked about Sonny Gold?

A Yes.

Q And did you testify that Sonny Gold came up to the apartment on 54th Street?

A I don't think I testified to that. I'm not sure.

Q Had you told anybody --

A Yes, sir.

Q Wait till I finish the question. Had you told anybody before you testified at the trial that Mr. Gold had come up to the apartment?

A I think I told Mr. Lavin that the time I was mixing at the apartment, Sonny Gold and Barney came up.

Q And that was before the trial in June?

A I'm not sure but I know I told Mr. Lavin.

Q Did you also tell Mr. Lavin about the time that Barney was eating in the Stagedoor?

A No, sir.

Q Never told him that?

A I was never asked.

Q When did he ask you for the first time about Barney?

A Barney never came up.

Q Barney never came up. When for the first time was Barney mentioned by Mr. Lavin as a subject to

be indicted?

MR. LAVIN: Objection.

THE COURT: Sustained as to form.

Q When for the first time did Mr. Lavin go into Barney asking you a lot of questions about Barney?

A Mr. Lavin never asked me a lot of questions about Barney.

Q Who asked you questions about Barney?

A Mr. Nesland.

Q When for the first time?

A Just before this trial.

Q When, first week in December, second week in December?

A Before the trial he asked me if I knew anything.

Q When before the trial? The trial has only been on possibly two weeks. When?

A Could have been the later half of December -- the first week or second week. I don't remember.

Q In December?

A I don't remember the date.

Q Just before the trial?

A Yes.

Q When did you first meet Barney?

A I don't remember the date.

Q Did you meet him before Mileto was arrested?

A No, sir.

Q After Mileto was arrested you started to register in those motels, is that right, out on the Island?

A In March, yes.

Q In March of what year?

A '72.

Q Had you met Barney before you went to the motel?

A No.

Q Did you register at motels in April?

A Of what year?

Q 1972.

A Yes, sir, I think so.

Q Did you meet Barney before you registered in April of 1972?

A I might have on the avenue.

Q Were you introduced to him?

A Not formally, no, I don't think so.

Q You mean you saw him there, is that right, some time before April of 1972?

A It could have been after or before. I don't remember what date.

Q Could have been after?

A Yes.

Q Did you speak to him on the avenue?

A When I first met him or when I first seen him?

Q Yes.

A You say hello and that was about it, at the first, at the beginning.

Q Did he say hello to you?

A Yes.

Q When would you see Barney on Seventh Avenue, what time of the day?

A In the early afternoon or sometimes in the evening.

Q Did you know where he lived?

A No, sir.

Q Did you ever go over to the hotel with him?

A Which hotel? Where I was mixing at?

Q No, no. Didn't you ever walk over with Barney to his hotel on 58th Street or 56th Street?

A I think I walked up to 58th with him but I didn't walk to any hotel with him.

Q But you saw him go into the hotel?

A No, sir.

Q When did you paint Herbie's house in Bellmore?

A Around in March.

Q Before registering at the motels?

A Yes, I started working for him, yes.

Q What?

A I was painting his home and then a day or so, I registered in the motel.

Q Up to that time, when you were painting his house, had you done anything for Herbie in relation to narcotics?

A I was working for the man, yes.

Q You were working for him?

A Yes.

Q Were you getting paid?

A Yes.

Q How was he paying you?

A I don't understand the question.

Q You said you were working for him and getting paid?

A Yes.

Q How much was he paying you?

A Sometimes I'd do some mixes and he'd give me some money.

Q I am not talking about that. I am talking about before you started to do the mixes. You said

you were working for Herbie.

A Yes.

MR. LAVIN: I object to the form. Could it be a little more definite?

THE COURT: All right, go ahead.

BY MR. MITCHELL:

Q Between the time you started to hang around on the avenue and the time you painted the house for Herbie in Bellmore, did you get any money from Herbie?

A Yes.

Q How much did you get?

A I don't remember.

Q Was it $5000? Was it $10,000?

A To paint the outside of his home? No.

Q How much was it?

A It was a few hundred he paid me.

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Q A few hundred?

A Yes.

Q Five hundred?

A I think he gave me a few hundred dollars. I don't remember.

Q When did he give it to you?

A Some time in March.

Q After the first mix?

A Could have been.

Q This $500 is in addition to the --

THE COURT: He said a few hundred. Don't keep on saying five.

You said a few.

Q This few hundred dollars was in addition to the 2000 he once gave you, right?

A Yes.

Q What other money did Herbie give you before you registered at the first motel?

A He gave me some money to rent out a truck.

Q We know that.

A When he was moving from Spring Street.

Q Oh, you moved him from Spring Street to Bellmore?

A Yes, from his home in Spring Street and some

stuff out of his mother's apartment.

Q Did you help carry the furniture into the truck?

A It wasn't furniture. It was mostly clothes.

Q What?

A It wasn't furniture.

Q Did you help carry the clothes?

A Yes.

Q When was that?

A Gee, I don't remember.

Q When did he move into the Bellmore house?

A It was at the beginning of the year.

Q And you painted after he moved in?

A Yes.

Q Did you paint any other places for him?

A Yes.

Q Where?

A Some parts, some inside of the home.

Q How about around 54th Street, 56th Street, 58th Street, did you paint any apartments for him?

A I painted an apartment that we had for the stash, 54th and Broadway and Seventh Avenue. I painted the apartment after we did the mixes in it. Because Herbie didn't want to use that apartment for a mix any more

because he wanted to move his girlfriend in.

Q When did you paint that apartment?

A I know it was in '73.

Q In '73?

A Yes.

Q Did you ever come down to the avenue in the outfit you were wearing to paint the apartment and ask Barney to go into the Stagedoor and get you a sandwich because you didn't want to go in with the paint all over you?

A It took two days to paint the apartment.

Q Did you do it, that's all I want to know.

THE COURT: He is talking about did you send Barney in for a sandwich for you because you were in working clothes?

THE WITNESS: Yes.

Q Did you tell him to come back to the apartment with it?

A No.

Q Are you sure of that?

A He knew where I was.

Q He came back to the apartment to deliver the sandwich, right?

A Yes.

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Q When he got to the door you took the sandwich, you paid him, you thanked him and you didn't let him in the apartment, is that right?

MR. LAVIN: Objection to the form of the question.

THE COURT: Overruled.

Is that what happened?

THE WITNESS: No, sir.

Q What?

THE COURT: He said "No."

Please don't repeat the questions. If you don't hear we will have the reporter read them. We are taking an awful lot of time and proceeding slowly.

Q What happened when he got back with the sandwish?

A He hung around the apartment for a while.

Q Watching you paint?

A Yes.

Q Now, this time that you claim that you and Jack Spada were mixing in the apartment, was that before the paint job or after the paint job?

A It was before.

Q How long before?

A About a week or so before I painted the

apartment.

Q Which would put it some time in '73, right?

A Yes.

Q About March of '73?

A No, sir.

Q When in --

A Could have been before March.

Q When?

A I don't remember the date.

Q You know it wasn't March, right?

A Right.

Q Was it February?

A Could have been.

Q On that occasion when you say that Sonny Gold came up with Barney did you give Barney any instructions?

A As to what?

Q As to anything.

A I gave him instructions that the mixing be ready in a half hour, for him to go downstairs and Sonny Gold to go with him until we finish mixing, that I didn't want him in the apartment with us.

Q Who did you say that to, Sonny Gold?

A Both.

Q Did he answer you?

A Yes.

Q Who answered you?

A Barney.

Q What did he say?

A He said, "Hurry up, I got customers waiting." Sonny said about the same thing.

I said, "It will be ready."

So they both left. I locked the door. Jack and I continued mixing.

Q Tell me, in all the pictures that you were shown on Seventh Avenue, were you ever shown a picture with Barney and yourself in the same picture?

A I never saw a picture of Barney up to this day.

Q You never saw a picture of Barney to this day?

A Right.

Q Can I ask you to look at 60 for identification. Tell me whether you see a picture of either yourself or Barney? Will you look at all the pictures?

THE COURT: Which one do you want? Do you want them both together or do you want a picture of him?

MR. MITCHELL: A picture of him.

THE COURT: A picture of this witness?

MR. MITCHELL: Yes.

BY MR. MITCHELL:

Q Will you look at it?

A No, sir.

THE COURT: What's the purpose of asking whether his photograph is in that group? Here he is on the stand. You don't need his photograph.

MR. MITCHELL: I have a purpose, your Honor.

THE COURT: You have a purpose?

MR. MITCHELL: Yes.

THE COURT: I don't see its relevance to this cross examination.

Q Will you take a look and see whether you have a picture of Barney there?

A No, sir.

Q You won't look at them?

A No, sir.

THE WITNESS: Can I ask a question, your Honor?

MR. MITCHELL: Will you mark these, please.

Q Mr. Conforti, I will ask you to look at the pictures, Government's Exhibit 62 for identification,

63, 64, 65, 66, 67 through 71 for identification. See whether you see Barney in any of those pictures.

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Will you look at it and see if you recognize anybody in those pictures?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Are you any of these pictures?

MR. LAVIN: Objection.

THE COURT: We will give the jury a five-minute recess.

(The jury left the courtroom.)

THE COURT: Now, Mr. Mitchell, you have taken a lot of pictures off the table from the possession of the government which they have in their files. I don't know what your purposes are or how they are related to this case and I want a detailed statement from you as to what you have been doing this morning and whether this is a filibuster that's going on here or not.

MR. MITCHELL: No, your Honor.

THE COURT: Explain it to me in detail.

MR. MITCHELL: I examined those pictures and they cover a period of time of several months when

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the police took pictures of the locality between 2 and 5 in the afternoon, as I understand it, and in only one picture is Mr. Conforti present. I wanted to show to the jury that his story of being around is not --

THE COURT: It is your story, not his story.

MR. MITCHELL: His story.

THE COURT: It seems to me you are certainly going about it in a most peculiar way. First of all, you haven't laid any foundation at all to indicate what these pictures are intended to be or whsat period they span. You are anticipating something that is not in the record and you are going about it in a way in which you are attempting to contradict this witness on a collateral matter. He is not here testifying to being around. He is testifying to narcotics transactions and he could have been at the Hippodrome or at the Palladium or at the ice skating rink or missing from all of them, and what would it have to do with this case? He is not claiming that any transactions -- he hasn't given testimony that transactions occurred at 54th Street and Seventh Avenue, has he?

MR. MITCHELL: Not up to this point.

THE COURT: All right. Therefore, what

you are asking him about and his being around, so to speak, is distinctly collateral to the issue. And here you are attempting in this backhanded way to get at material that's in the government's files.

I have listened to you patiently and --

MR. MITCHELL: The government was going to use it in any event, your Honor. I could wait for the next --

THE COURT: Please, Mr. Mitchell, that doesn't appeal to me as a reason coming from a lawyer of your standing.

I have listened to you patiently all morning. I listened to you yesterday afternoon. You proceeded without interruption and I am frank to say that the cross examination thus far has had only extremely tangential value to this case.

MR. MITCHELL: As long as it has some value, your Honor, that's the important thing for my client.

THE COURT: Then I would suggest thatyou try to get a little closer to the problems that we are facing. I don't see thatyou can start in getting the government's case in with this witness before the government puts any pictures in and whether or not he is on the pictures or not seems to be something really don't deal with the issue that we are trying. I don't mean to be short with you or cross but what I am trying to do is to keep this case moving, if I can.

MR. MITCHELL: I appreciate that, your Honor.

I thought that -- I mean, I will be very frank with you. The government would eventually introduce these and then we will be in a position o f having to call Mr. Conforti back.

THE COURT: That may be a position you are entitled to take. I am not saying that won't happen or that can't happen. It all depends on the posture of the case at that time.

MR. MITCHELL: I will withdraw the application at this time.

THE COURT: Bring the jury back, please.

(Jury present.)

THE COURT: All right, Mr. Mitchell, you may proceed.

Q Did you have any discussion with Mr. Feffer about Barney?

A I don't think so. He never came up. I'm not sure.

Q Did you ever tell Mr. -- let me ask you this: Have you related everything about Barney?

A I don't understand the question.

Q Have you told this jury and his Honor everything that you know about what Barney is supposed to have done in relation to narcotics?

MR. LAVIN: Objection to the form of the question.

THE COURT: The witness may answer.

A As far as I remember the dealings with narcotics, to the best of my ability, yes.

Q Did you ever tell anybody that Barney delivered mix?

A I think so.

Q Was that true?

A Yes.

Q Did you tell us that today?

MR. LAVIN: Objection to the form of the question.

THE COURT: Are you asking whether that was his testimony at this trial?

MR. MITCHELL: Yes.

THE COURT: All right, you may answer that question.

A I was never asked.

MR. MITCHELL: I have no further questions.

THE COURT: Is there any redirect?

MR. NESLAND: A few questions, your Honor.

REDIRECT EXAMINATION

BY MR. NESLAND:

Q Mr. Conforti, you testified you are under protective custody, is that correct?

A Yes, I am.

Q When were you first placed under protective custody?

A Immediately after I made bail.

Q Have you received money from the government while you have been under protective custody?

A Yes, sir.

Q How much have you received from the government while you have been in protective custody?

A Now I am getting --

THE COURT: He wants to know what the total is.

A I don't know.

Q Do you receive a monthly amount?

A Yes.

Q What is that monthly amount?

A 585 a month now.

Q For how long have you been receiving 585 a month?

A A few months now.

Q You pay your living expenses out of that $585?

A Yes, sir.

Q You pay your family's living expenses out of that?

A Yes, sir.

Q How many members are in your family?

A Three, including myself is four.

Q You pay your rent out of that?

A Right now I am, yes.

Q Who chose the place in which you are now living?

A It is still --

MR. LA ROSSA: Objection.

THE COURT: Sustained.

Q You paid for your rent?

A Yes.

Q Do you put any of that money away in a bank?

MRS. ROSNER: I object to that.

THE COURT: Sustained.

Q Have you received any other money than that from the government other than the $585 a month?

A My witness fee.

Q What are those witness fees?

A Right now I am getting $16 a day -- I am in the hotel now for two weeks. And the government is paying for the hotel.

Q You receive witness fees while you are here at the court; is that correct?

A Yes, sir.

Q Mr. Conforti, has anyone from the United States Attorney's office ever told you to lie?

MRS. ROSNER: Objection.

THE COURT: I will sustain the objection.

Q Has anyone from the government ever told you to lie?

MRS. ROSNER: Same objection.

THE COURT: It is not the same objection but it is the same ruling.

Q Has anyone from the government ever told you to put somebody in a case?

MR. LA ROSSA: Objection.

MRS. ROSNER: Objection, your Honor.

THE COURT: I will sustain it as to form.

Q Mr. Conforti, have you been sentenced yet?

A No, sir.

Q Is Judge Pollack the Judge who will sentence you?

MR. LA ROSSA: Objection.

THE COURT: Overruled.

A Yes, sir.

Q You have testified concerning a telephone conversation which you had with Sam Kaplan.

A Yes, sir.

Q Do you recall in that conversation Kaplan asking you: "After they promised they're gonna let you off -- they're gonna send you away now.

"CONFORTI: They didn't make me no promises, they first promised they're gonna take care of my family whatever --"

MRS. ROSNER: I object to the form, your Honor. No proper foundation.

THE COURT: What page are you reading from?

MR.NESLAND: Page 11, your Honor.

THE COURT: You may continue.

Q "CONFORTI: They didn't make me no promises, they first promised they're gonna take care of my family whatever put them in a safe place whatever.

"KAPLAN: You don't have to worry about your family, I think because everyone is away.

"CONFORTI: Well, Sammy, me -- they got me

already -- I'm gonna do my time and when it's all over you know I'm gonna start a new life and whatever."

MR. LA ROSSA: I object to the form of the question in voew of your Honor's direction to me.

THE COURT: I regard this as responsive to the area that you went into and that's the only basis that I am allowing it.

MR. LA ROSSA: I am talking about the manner in which it was done.

THE COURT: The manner was precisely your manner. I told you at the time and you did follow it out. You read the supposed colloquy. And the question was unasked. Mr. Nesland even was about to ask the question when you cut him off.

MR. LA ROSSA: You will note my objection to this form, please.

THE COURT: Why don't you wait until he asks the question and then you will have your objection. Make it again so you have it at the right place. What was the question?

Q Do you recall having that conversation with Mr. Kaplan?

MR. LA ROSSA: Objection to form.

THE COURT: Overruled.

MR.DUKE: Your Honor, I object on another basis.

THE COURT: Hand it up.

Court's Exhibit 16.

Court's Exhibit 16 is filed. The objection is overruled. What is the answer? Do you remember that occurring in the colloquy that you had with Mr. Kaplan?

THE WITNESS: Yes.

Q Mr. Conforti, you recall in that conversation Mr. Kaplan saying: "But these guys are lyin'. They get 2-1/2 years to lie and you're gettin 3 years for tellin the truth.

"CONFORTI: I'm gonna get more than that."

Do you recall that being a part of the conversation you had with Mr. Kaplan?

A Yes.

MR. DUKE: Objection.

THE COURT: Same ruling.

A Yes.

Q Do you recall Mr, Kaplan in that conversation saying: "Joey, you did --"

THE COURT: What page?

MR .NESLAND: Page 16, your Honor.

Q "KAPLAN: You did enough for them. One thing --

you didn't lie.

"CONFORTI: What?

"KAPLAN: You said you didn't lie so they can't hurt you too much. They'll make you lie -- don't worry -- before it's over they'll make ya lie. Like a blank.

"I won't lie -- that's one thing I won't lie."

Do you recall that being part of the conversation youhad with Mr. Kaplan?

MR.DUKE: Objection.

THE COURT: Same ruling.

A Yes.

Q Do you recall Mr. Conforti saying:

"I won't lie -- that's one thing, I won't lie?"

MR.LA ROSSA: That was just asked.

MR. NESLAND: I don't believe I mentioned whether it was Mr. Conforti who said that last line.

Q Do you recall saying something to that effect to Mr. Kaplan?

A Yes, sir.

Q Do you recall your testimony yesterday that no agents asked you about Sam Kaplan?

A Some of it, yes.

Q You now recall that agents did ask you about Sam Kaplan, is that correct?

MRS. ROSNER: Objection.

MR. LA ROSSA: I object to the form of the question.

THE COURT: Sustained.

Q Did any agents ask you about Sam Kaplan?

A Yes.

Q Do you recall what answers you gave to them?

MRS. ROSNER: I am going to object, your Honor, on the ground it is self-serving.

THE COURT: That objection is overruled.

Do you recall having answered them, do you remember answering the agent on that subject?

THE WITNESS: Yes, your Honor.

THE COURT: Next question.

Q Do you recall what those answers were?

MRS. ROSNER: Objection. Self-serving.

THE COURT: Overruled.

MR. LA ROSSA: Note my objection as well, please.

THE COURT: On what grounds?

MR. LA ROSSA: On the form of the question.

THE COURT: Rephrase the form.

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Q Did you give them answers?

A What did you say?

THE COURT: That makes it very simple. Just shorten these questions up and make it very simple.

MR. NESLAND: Thank you, your Honor.

THE COURT: What did you say?

A On one occasion I told them that Sammy Kaplan was involved with Louis at the beginning and they asked me was the narcotics I told them "No, I don't think so."

Q Do you recall Mrs. Rosner's question to you yesterday as to whether you told Sam Kaplan in a telephone conversation that you would do anything to get out of the trouble you were in? Do you recall that question?

A I think so.

Q Did you ever tell Sam Kaplan that?

A No, sir.

Q Did you ever tell anyone that?

A No, sir.

MR .NESLAND: That's all the questions I have, your Honor.

MR. LA ROSSA: May I, your Honor?

RECROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Conforti, after you left the court here yester-

day, did you have a conversation with any of the Assistant U.S. Attorneys?

A Yes, sir.

Q Did you have an opportunity to read what was marked for identification as Defendants' Exhibit Q?

A I don't know what you are talking about. They just told me, "Tell the truth" and that was --

MR. LA ROSSA: Move to strike it.

MRS. ROSNER: Move to strike that.

THE COURT: Did they give you anything to read?

A No, your Honor.

MR. LA ROSSA: May I show this to him?

THE COURT: No.

Q You read nothing yesterday? from the time you left here until the time you came here this morning?

MR. LAVIN: Objection, your Honor.

THE COURT: I think,Mr. La Rossa, you are just doubling up on the question I put to the witness so as to make sure that no error crept in here.

Q Did anyone read anything to you?

A No, sir.

Q Did you hear the questions that were asked to you a few moments ago, last night or this morning?

A I didn't read nothing, sir.

THE COURT: He wants to know, did somebody give you the same questions last night thatyou heard this morning?

A No, your Honor, I just left.

Q I am sorry.

A I am.

When I walked out the door I just left the building.

Q And you didn't talk to anybody this morning?

A About what are saying here?

Q About the testimony that you gave here this morning.

A The only, Mr. Lavin says "Tell the truth and don't get excited. Just try to be as calm as possible."

Q Tell me, yesterday you told us that the agents didn't ask you about Sammy Kaplan, didn't you?

A Not at the beginning.

Q Do you now recall that the agents asked you about Mr. Kaplan?

A Not at the beginning they didn't ask. Sammy Kaplan didn't come up.

Q At one point did he come up with the agents?

A I think so.

Q You told us yesterday that he didn't come up; isn't

that right?

MR. LAVIN: Objection. That is not his testimony.

THE COURT: If there is an issue about it, then the proper form will have to be followed. Frankly, I don't recognize it myself.

Q Did you talk to anybody between last night and this morning about what information you had given to the government about Sam Kaplan?

A I haven't spoken to anyone.

Q Did anyone remind you of any statements you had made to agents about Sam Kaplan?

A I was just told to tell the truth and --

MR. LA ROSSA: I move to strike that.

THE COURT: Yes. Mr. La Rossa is asking you a specific question as to whether or not Mr. -- will you just put the question so that we have Mr. La Rossa's question and not mine.

THE COURT: Whether or not what?

(Last question read.)

A No, no, your Honor.

Q Well, you just told us a moment ago , Mr. Conforti, that you told an agent that Sam Kaplan was involved with Louis Mileto, is that right?

A Yes.

Q Who was the agent you told that to?

A I don't remember.

Q No idea?

A I spoke to so many, there were so many in the room.

Q But you also told them that this had no involvement with narcotics; is that right?

A I told them I was n't sure it was involved.

Q I am sorry?

A I told them I wasn't sure. I never seen anything with Sammy at the beginning.

Q Didn't you just a few moments ago tell us that you didn't think it had anything to do withnarcotics?

A Yes.

Q Was that true?

A Yes.

Q As you sit there now, do you know whether Mr. Kaplan or Mr. Mileto were ever involved in narcotics together?

A I know they were in partners with something but I don't know if it was narcotics.

Q Do you know whether Mr. Mileto ever delivered narcotics to Mr. Kaplan?

A Now I know, yes.

Q Did you know when you gave the statement to the agent about Mr. Kaplan?

A No, no, sir.

Q You didn't know it then?

A I am lucky if I knew my name at that time.

Q Did you lie to that agent on that day when asked about Sammy Kaplan?

A No, sir.

Q Did you know when you spoke to that agent that Mr. Mileto nad delivered narcotics to a hospital to Mr. Kaplan?

A I delivered the narcotics.

Q Where did you get them from?

A Mr. Herbie.

Q Was Mr. Mileto around at that time at that time? Was he at the hospital?

A No, sir.

Q Did you tell the agent that you delivered narcotics to Mr. Kaplan from Herbie?

A No, sir.

Q You were just asked a moment ago about your conversation with Mr. Kaplan.

Did you say to Mr. Kaplan, referring to Mrs. Mileto, "Sammy, she put me in the blank hole"?

MR.LAVIN: Objection, this is beyond the scope.

THE COURT: Sustained.

MR. LA ROSSA: May it please the Court, I am asking

the exact question that was asked, the last one.

THE COURT: What page?

MR. LA ROSSA: I am referring to page 15, the fifth transcribed statement down, referring to C.

THE COURT: Please, I don't know anything about anything being transcribed. There is no evidence that anything was transcribed. You have got a piece of paper in your hand and I am letting you read from it. I don't want you to convey to the jury anything that is not part of the evidence in this case; advertently or inadvertently.

THE COURT: I think you have designated the wrong page of the paper that you have.

MR. LA ROSSA: 15, sir; the sentence starts with the word "Sammy."

THE COURT: Well, you are mistaken that was not read but you may read it.

MR. LA ROSSA: I am not suggesting it was read.

THE COURT: You just told me a moment ago it was read, and I say it was not read but I am permitting you to read it.

Q Did you say this, sir, "Sammy, she put me in the hole and I am going to get out of it" referring to Mrs. Mileto?

A I don't think I said it in that way.

Q May I show the witness the exhibit to refresh his

recollection.

THE COURT: You are barred by the answer.

MR. LA ROSSA: Not my objection to the Court's ruling.

THE COURT: Yes.

MRS. ROSNER: I join Mr. La Rossa's objection.

THE COURT: Yes.

Q Did you tell Mr. Kaplan that you were going to get three years?

A I didn't know. How do I know what I am going to get?

Q Did you tell Mr. Kaplan that you were going to get three years?

A I don't think so.

Q Did you mention three years to him?

A I don't think so.

Q Did you ever tell anyone thatyou were going to get three years?

A I don't remember.

Q Mr. Conforti, do you know what maximum penalty thatyou can receive for the charge you pleaded guilty to?

MR. LAVIN: Objection.

THE COURT: Overruled.

A I have --

Q Do you remember when you pleaded guilty to the charge?

A Yes.

Q Did the judge or anyone in that courtroom tell you what the maximum penalty you could receive was on the charge that you pleaded guilty?

A I think they did, but I don't remember.

Q As you sit there you have no idea what it could be?

THE COURT: He said he doesn't remember.

Q Did anyone ever tell you what the maximum penalty that you could receive on that charge was?

A I think so.

Q What did they tell you?

A I don't remember. I was worried enough about just pleading guilty.

MR. LA ROSSA: I have no further questions.

MRS. ROSNER: Your Honor, may I address an objection to the court?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. DUKE:

THE COURT: You can go right ahead.

Q Mr. Conforti, when did you tell the agents that as far as you knew Kaplan and Mileto were not involved in narcotics together? When did you make that statement to the agents?

THE COURT: Did you make any such statement? Have you testified that you made any such statement?

THE WITNESS: I haven't testified to that.

THE COURT: He says he hasn't testified the way you put the question.

Q Did you make the statement -- did I understand you to testify that you made the statement to the agents about Kaplan and Mileto's involvement in narcotics?

THE COURT: I think you better ask the questions directly instead of this way.

Q Did you make a statement to agents --

THE COURT: Please not whether he made a statement because I am going to bar that on the ground it's been covered. If you want to ask a question you may do that.

Q Whendid you make a statement to the agents that you testified about on redirect?

MR. LAVIN: Objection to the form of the question.

THE COURT: Overruled. He is asking for a time and he may ask that.

A I don't -- I don't remember. It was at the beginning -- I don't remember.

Q Was it before June of this year?

A I don't know.

Q Was it in 1973?

A Of course.

Q How long after your arrest? Can you locate it in terms of the date of your arrest?

A It could have been before the trial or after the trial. I was just concentrating onwhat I was involved with Herbie.

Q You are referring to the trial in June?

A Yes, sir.

Q Was it at or about the time of that trial in June?

THE COURT: Court's Exhibit 17 has been handed up.

(Court's Exhibit 17 marked.)

Q Was it at or about the time of the trial in June that you made the statement to the agents?

A Could have been during the trial or after the trial. I don't remember. I can't pin it down because there were so many questions and answers.

Q How did you learn that Kaplan and Mileto were involved together in narcotics?

MR. LAVIN: Objection.

THE COURT: I suppose there should be a preliminary question to head off the objection, did he learn and how did he learn. Break it up into two parts.

Q Subsequent to the time that you made the statement to the agents did you learn that Kaplan and Mileto were involved together in narcotics?

A Yes.

Q How did you learn that?

A When I first knew?

THE COURT: How did you find out about it after you had mentioned it. He wants to know who told you about it or what.

A Louis told me about it.

THE COURT: Louis told you about it?

THE WITNESS: Yes, back in 1966 or '67 out in California.he was transporting stuff from out on the Coast to Sammy Kaplan.

Q When did Louis Mileto tell you this?

A I think it was in the year '66 or '67, about the summertime.

Q Is that when Mr. Mileto made the statement to you?

A That he was his partner?

Q Yes.

A Which statement are you referring to?

Q You testified on redirect, if I understood you, that at the time you made the statement to the agents you did not know that Kaplan and Mileto were involved in narcotics. Now, you do know. What I am trying to find out is how did you get that information?

A At the beginning it wasn't heroin that Louis and Sammy were involved with.

THE COURT: Mr. Duke is trying to focus your attention on a specific set of facts. You said previously that you said something to an agent, and then after that you found out something.

THE WITNESS: Yes.

THE COURT: He wants to know what it was you found out and when it was that you found this out. after you spoke to the agents.

Is that right, Mr. Duke?

MR. DUKE: Yes, that's correct.

A I knew that Sammy was already involved when the agent asked me at the time that he was involved, but I told the agent I don't think he was involved because they weren't concentrating on Sammy Kaplan as much as Sonny Gold and Herbert Seprling. They were con-

centrating --

MRS. ROSNER: I move to strike that part of the answer, your Honor, they were not concentrating and beyond that.

THE COURT: We will strike that out.

See if you can get your mind on the specific questions so that we can move along.

Did you find anything out on this subject after you made mention to the agents of what you told us about?

THE WITNESS: Did I find out anything about --

THE COURT: Yes, anything new, in addition.

THE WITNESS: No, I didn't find out anything new, no, your Honor.

THE COURT: All right.

BY MR. DUKE:

Q Did you discuss it with any agents between the time you made the statement and today?

A No, sir.

Q Did you discuss with Mr. Lavin the testimony you gave yesterday about the phone call to Mr. Kaplan?

A No, sir.

MR. DUKE: I have no further questions.

THE COURT: Mr. Peluso, do you have any ques-

tions?

MR. PELUSO: No questions.

THE COURT: Mr. Mitchell, do you have any questions?

MR. MITCHEL: No, your Honor.

THE COURT: Thank you. You may step down.

MR. NESLAND: Your Honor, may I have one question.

THE COURT: Just a moment.

MR. NESLAND: Just one question.

THE COURT: There is always the one question.

REDIRECT EXAMINATION

BY MR. NESLAND:

Q Mr. Conforti, you testified about a conversation that you had wi t h Mr. Lavin this morning?

A Yes.

Q Besides his telling you to tell the truth, did he tell you to think about Sam Kaplan?

A Yes, sir.

Q Did he tell you anything else?

MRS. ROSNER: I am going to object to that.

THE COURT: Well, in the face of the objection of the defendants, it is unimportant.

MR. NESLAND: I will withdraw it, your Honor.

THE COURT: Step down.

(Witness excused.)

(In the robing room; all counsel present.)

THE COURT: Yesterday at the stenographer's minutes, page 139 of that session, Mrs. Rosner put on the record an inquiry stating that she would like to make an inquiry on the ground that she believed that Mr. Spada was found dead at a time well subsequent to the actual date of his death, stating further, "I think the Government conducted or had conducted at its behest an autopsy analysis which would be in the form of a report which would give at least an approximation of the date of his death," adding, "It may very well be exculpatory matter, Judge."

I think that the subject was adverted to thereafter. I have just received what purports to be the copy of the inquisition reported dated December 14, 1973 which is signed by the coroner for the county of Greene County, John J.McCurry,who makes this report upon and after inspecting the body of Joachim Spada, Jr., a/k/a Jack Spada, Jr., in which he certifies and finds that the body inspected by him came to his death on the 26th day of October 1973 in the Town of Catskill, New York.

Among other things, he recites, "On October 29, 1973 at 11:25 a.m., I was called via telephone by the New York State substation, Leeds, New York, to investigate an unattended death at a location," and he gives the exact

place,"in the Town of Catskill, New York."

He says further, "I examined the subject, who was lying face down on the earth, and found both hands had been hacked off above the wrists or forearm region. Further examination revealed five gunshot wounds of the thoracic trunk area and two gunshot wounds of the skull."

He states further, "The subject had been dead over one day, and in my opinion death did not occur at above-stated location. Approximate time of death was 5:00 a.m. on October 28, 1973 at an unknown place."

The balance of this report seems to deal with the removal of the body for burial and so forth, and the further finding that the death was by homicide caused by gunshot wounds by an unknown assailant.

This is the usual pathological report which goes into details not involved in the request, winding up with the statement that there was no rigor mortis, and the statement of the pathologist, quote, "It is estimated that death took place 24 to 36 hours prior to autopsy."

The autopsy was performed at Memorial Hospital of Greene County at 5:00 p.m. on October 29, 1973, according to the report of the pathologist.

Does that cover your inquiry?

MRS. ROSNER: Yes, it does, your Honor. And I

want to thank the Court for aiding counsel in that regard.

MR. LaROSSA: Thank you.

MR. LAVIN: Your Honor, may the record reflect that I handed that to you this morning and that I told Mr. Mitchell that I had it.

MRS. ROSNER: Thank you, Mr. Lavin.

THE COURT: All right, I will hand it back to you.

MRS. ROSNER: Your Honor, I am sorry, I don't know if the record reflects, but may we just know the name of the coroner? Your Honor may have read it, but just --

THE COURT: The coroner for the County of Greene is John J. McCurry.

MRS. ROSNER: I think I remember hearing it.

THE COURT: He did not do the autopsy.

MRS. ROSNER: Is the name of the individual indicated who did perform the autopsy?

THE COURT: Yes. His name is Dr. Joseph Bellamy.

MRS. ROSNER: Thank you, your Honor.

THE COURT: Are you ready to go ahead?

MRS. ROSNER: Your Honor, there is one other matter which will only take a moment. I don't know whether permission is necessary, but I think it is wisest to proceed this way. I would like to conduct an investigation to determine whether there is a bathroom on the third

mbgs

floor of this building which would face the front of the building, and I would hesitate to do so without first advising the United States Attorney.

THE COURT: You mean you wouldn't want to go walking into a mens room?

MRS. ROSNER: No, I certainly wouldn't. And perhaps they might, if they have knowledge of the situation, advise us and we would be willing to stipulate to that, your Honor.

MR. LAVIN: Both the bathroom on the third floor, and there is one bathroom on the third floor which faces the front, and my room faces the front. 307.

MR. MITCHELL: We are concerned with the bathroom.

MR. LAVIN: Both face the front.

THE COURT: You ought to know that.

MR. MITCHELL: I know, the pillar of the court-house is in front of the bathroom.

MRS. ROSNER: Might we be permitted to see the room, one of the male counsel, I guess, would be more appropriate.

MR. LAVIN: Just tell me when you want to do it.

MRS. ROSNER: All right.

(In open court; jury present.)

THE COURT: Next witness.

mbgs

MR. LAVIN: Zelma Vance.

Z E L M A V A N C E, called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Miss Vance, where did you live during the year 1972 and the first half -- the latter half of 1971?

A In 196-02 75th Avenue, Rego Park, Queens.

Q Did you know an individual by the name of Louis Mileto?

A Yes.

Q Tell us when you first met Mr. Mileto.

A I met him in May 1971, and I think I saw him once after that. And then I didn't see him again for a few months, and I bumped into him about September and we became friends. You know, we used to talk a lot on the phone. He would take me home from work and so on.

Q Did there come a time when Mr. Mileto asked to use your apartment?

A Yes. What it was, he said he has some people to see in Queens and he said like could he, you know, come and wash up and while I was at work, and I said yes, fine. I gave him the key, and then --

Q Do you recall when this was that you gave him

the key?

A This must have been -- must have been October, late October, you know. It was just for a day; I thought it was just for a day.

Q What year was it?

A 1971.

Q Did he tell you what he wanted to use the apartment for?

A Just for him, you know, just to make a few phone calls, wash up and so on, you know. And then when I saw him again a few days later I asked for my key back, and he said, "That's all right, because I've had one made." And,you know, then he just used to use the apartment when I was at work, and so on.

Q Did he come to the apartment often?

A I guess during the daytime he was there fairly often. There was Coca-Cola bottles he used to leave, you know, things like that. Otherwise there was no way of telling when he was there and when he wasn't. Or he'd call me, you know, in the evening, and say, "Will you be home or are you going out" or whatever.

Q Did he ever leave anything in the apartment?

A Yes. A few weeks after that, I come home one day and there was a trunk in my apartment. When I spoke

to him I said, "What's the trunk doing there?" He said he has personal things in there of his and that I should leave it alone and not touch anything, which was, you know, and -- which I did, you know.

Q Did there come a time when he started paying for the apartment?

A Yes, one night -- I think that week, he drove me to the dentist, and when I came out, you know --

Q Could you fix a time for this, approximately when this was?

A In October, it must have been -- it was cold already, it must have been like the last week in October, you know. First week, or in November. And I had to -- I went to the dentist, and he took me and he waited for me to take me back, and I said to him, "I have to pay now $600 for my teeth." And so he said, "Well, don't worry," he said, "because I will take care of the rent of your apartment," you know.

Q How much was he paying?

A He paid $200 for the month. That was for the rent and the telephone calls he made.

Q Did you ever ask him about that trunk again?

A Yes. One night when we went out to dinner and he had a couple of drinks of wine. He couldn't drink. And I

said, could you please tell me what's in the trunk, and he told me it was "my things" and it was nothing for me to worry about.

And I asked what it was used for, and he told me, you know, "I told you nothing to worry about," and that was that.

Q Did you ever receive any telephone calls for Mr. Mileto while you were in the apartment?

A Oh, yes, and they'd say "Is Louie there?" And I'd say yes or no, and if he was he took the phone. If he wasn't most people, you know, just hung up.

Q Did you ever recognize the voices of any people that called?

A Only one person.

Q Who was that?

A That was Herbie.

Q Do you know Herbie's last name?

A Now, I do. Sperling. At the time, you know, it was just "Herbie."

Q Did you ever meet Mr. Sperling?

A Yes, I have met him twice. Once when I was with somebody named Jimmy Doyle and we were out in a restaurant and, you know, I was introduced. And once on 47th Street where I worked. He'd come out of some place and Louis was

waiting for him, and, you know, I met him again. And we spoke for a few moments.

Q Did you ever observe Mr. Mileto in your house with a shoe box?

A Yes. This must have been December, this was late, and --

Q What year?

A In '71; right? Yes. And he came in with a shoe box and I had some people there, and he opened the box and he said, "Have you ever seen anything like this?" And it was loaded with money. And then he closed the box. He made a very quick phone call and then he left.

Q Did you see the denominations of the bills in the box?

A They were hundred dollar, fifty dollar bills, but I don't know how much. I mean, it was -- it was a lot.

Q Did you ever ask Mr. Mileto what he did for a living?

A Yes.

Q What did he tell you?

A He told me --

MR. LaROSSA: Objection.

THE COURT: Sustained.

Q Did Mr. Mileto ever ask you to leave the

apartment when he was there?

A Yes. Sometimes he'd either call me at work or when I came home he'd tell me to take an overnight bag and stay in a motel at night, or there was one time when he said, "Don't even come home from work. Go straight to a motel." And he packed a bag for me and sent it up with the porter.

Q Did he tell you why he wanted you to stay out?

A Well, he said to me that he had card games being played there, when I asked him why.

Q Who paid for the motel?

A He did.

Q How often did you stay in the motel, at his request?

A I'd say three or four times.

Q I direct your attention to February 10, 1972. Do you recall that day?

A Yes, I think so.

Q Did you see Mr. Mileto on that day?

A Yes. I'd come home from work -- I came home from work, and I was going out on a date, and he says to me like, you know, you got to get out. I got ready and I ran out. I asked him what time can I come home, and he said about 11:00, 11:30.

And I went out and I left too early and I said

I've got to come back home because I made a mess-up of my arrangements. And he said no, you can't come home. But the person I was seeing called and we met somewhere else but, you know, and then when I got home at about 11:30 that night, the chain was on my door when I put the key in and there was a strange person in my apartment.

Q Did you know who that person was?

A Now I do.

Q Tell us his name.

A Joey.

Q Do you know his last name?

A For -- Fortini -- I don't know. I know him as Joey, you know.

Q What did this person say to you?

MR. LaROSSA: Objection.

Q What happened at that time?

A Joey said, you know --

MR. LaROSSA: Objection.

THE COURT: Don't tell us what he said; just tell us what happened.

THE WITNESS: Oh, well, I'm sorry.

A I opened the door, the chain was still on the door and I said, "What are you doing here?" And he said, "I'm waiting" --

MR. LaROSSA: Objection.

THE COURT: No, you can't say that.

What is the next thing that happened after you tried to get in? Did you get in?

THE WITNESS: No. We spoke through the door.

THE COURT: All right, and then what happened? Then you went downstairs?

THE WITNESS: Then I went away, yes.

THE COURT: All right.

Q Where did you go?

A I went to a diner called the Omaha on -- is it Queens Boulevard?

Q How far away from your apartment?

A About ten minutes, if that; you know, walking.

Q How long did you stay there?

A I stayed there for about an hour or so, hour and a half, whatever. Then I called my apartment because I wanted, you know -- it was late and I didn't know what to do.

And I was told that, you know, Louis wasn't back yet.

MR. LaROSSA: Objection.

Q As a result of that telephone call did you go back to your apartment?

A Yes, I had to go back. You know, I said, I can't

wait out in the street any more. It is ridiculous. And, you know, either he leaves or I don't care, I've got to go home.

Q Did you go back in the apartment?

A And I got back into the apartment, and it was just like waiting for Louis to come, you know. This Joey and myself.

Q Did you observe that Joey made any phone calls that night?

A He made about three phone calls. I know he phoned Louis' wife. I think he phoned his own wife and I think he spoke to Herbie or he spoke to somebody who -- because he asked him what he should do.

Q Can you tell us what happened after that time?

A Well, it was getting later and later and Joey kept walking backwards and forwards like, in my studio. And I fell asleep with my clothes on, you know, in the bed, and then when I woke up, I was all hot and sticky, and I know Joey had -- it was morning already. Joey had gone down for coffee and I had to get ready to go to work, and he left.

And, you know, and then I went to work, and when I came home that evening, I went to open my door, and this Joey came out of the stairwell. He'd been waiting for me to come home, and he says to me, like --

MR. LaROSSA: Objection.

THE COURT: You had a conversation with him.

THE WITNESS: Oh, I'm sorry.

THE COURT: You had a conversation with him and then what happened?

A And then what happened was I got rid of the things, anything I found in my apartment that didn't belong to me I threw out.

Q Can you tell us what those things were?

A There was a fruit scale which was broken. I found in a closet. And I found cellophane -- small square cellophane bags, thousands of them, in a closet, and I threw them out, you know. And that was all I found.

Q Was the trunk still in the apartment?

A The trunk was there.

Q Was it opened at that time?

A No.

Q Let me show you Government Exhibit 55 for identification just from here. Can you recognize this trunk?

A Yes.

Q How can you? Is there any way?

A First of all, the lock's broken and also the bottom is scratched.

Q Was that lock broken after February 10?

A I don't remember when the lock was broken.

Q Was it empty?

A It was empty. The way the lock was closed I always thought it was locked. That's why I never touched it, you know. I left it as it was. But then when I went to use it for my own personal things, you know, I found that the lock just came off, it was broken.

MR. LAVIN: Your Honor, the Government offers Government Exhibit 55 for identification in evidence.

MR. LaROSSA: Objection.

THE COURT: It will be received subject to connection.

(Government Exhibit 55 received in evidence.)

Q After February 10 did you ever receive a phone call from Mr. Mileto?

A Yes. That -- after Joey went, I just got into the house and then Louis called me and he said he's had some trouble and, you know, not to worry, and I said to him like, you know, "Well, what's going on?" Like "What's happening?" And he said well, he had to meet somebody or something, and he, the person, was about two or three cars in front and was picked up by the police, and he was like in his car but some policemen came and they took him out of the car. But he said, "Everything's all right now."

Q Is that the last time you heard from him?

MR. LaROSSA: I object and move that be stricken.

THE COURT: Strike out "Everything's all right."

THE WITNESS: I'm sorry. You know the way --

THE COURT: That's all right.

Q Is that the last time you heard from Mr. Mileto?

A It was the last time I ever heard from him, yes.

Q Did you ever notice any damage to your apartment?

A Not for a long while after. I noticed that one of my burners is like scarred, like the enamel was off, you know, on my cooker, you know.

Q Did you ever notice any scorch marks?

A No.

Q Did there come a time when you gave that trunk to someone?

A Yes.

Q Do you know who? Who did you give it to?

A Agent Hanover and Agent Clark.

MR. LAVIN: I have no further questions.

THE COURT: Any cross-examination?

MR. LaROSSA: I have no cross.

THE COURT: Does any defendant have any cross-examination?

MRS. ROSNER: No, your Honor.

THE COURT: No cross-examination requested by any defendant. You may step down. Thank you very much.

(Witness excused.)

THE COURT: Next witness.

MR. LAVIN: The Government calls John Pope.

J O H N P O P E , called as a witness by the Government, was duly sworn and testified as follows:

MR. NESLAND: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. NESLAND:

Q Mr. Pope, by whom are you employed?

A Drug Enforcement Administration.

Q For how long have you been employed by the Drug Enforcement Administration?

A Approximately eight years.

Q What is your position with the Drug Enforcement Administration?

A Supervising agent.

Q Were you on duty on February 10, 1972?

A I was.

Q I direct your attention to approximately 12:30 p.m. of that day and ask you in what capacity you were working.

A On February 10, approximately 12:30, I was working in an undercover capacity here in the New York area.

Q Was anybody with you at that time?

A Yes. I was in the company of two informants.

Q Where did you go at approximately 12:30 p.m.?

A To the vicinity of 19th Street and Second Avenue in Manhattan.

Q What happened when you arrived at 19th Street and Second Avenue?

A I was introduced to a gentleman by the name of Carter.

Q Where were you introduced to Mr. Carter?

A At the Artie's Ice Cream Shop on the corner of 19th and Second Avenue.

Q Do you know Mr. Carter's full name?

A I believe it is Paul Carter.

Q Did you have a conversation with Mr. Carter at that time?

MR. LaROSSA: Objection.

THE COURT: He may answer yes or no.

A Yes, I did.

Q What did he say to you and you say to him, if anything?

MR. LaROSSA: Objection.

MR. NESLAND: Subject to connection, your Honor.

THE COURT: Yes, received subject to connection.

A I talked with Mr. Carter and Mr. Carter told me that there was heroin available and the price at the time would be $30,000 per kilo. And I ordered three kilograms of heroin.

THE COURT: A kilo is 2.2 pounds; is that right?

THE WITNESS: That's correct, your Honor.

Q Did you have any further conversation?

A Yes. Mr. Carter said to call him at approximately one o'clock, that at one o'clock he would receive a call from his man.

Q Was the telephone call thereafter made?

A Yes, it was.

Q When was that call made?

A Approximately 2:30.

Q As a result of that telephone call, what happened?

A I drove to the vicinity of 19th and Second Avenue at approximately 3:30 and met with Mr. Carter, at which time Mr. Carter told me to drive to the Wetson hamburger stand on Woodhaven Boulevard and Queens Boulevard in Queens.

Q Where did you meet with Mr. Carter at that time?

A At the Artie's Ice Cream Shop on 19th Street and

Second Avenue.

Q What occurred after you had the conversation with Mr. Carter?

A Mr. Carter entered the car, and directed me over various streets to the vicinity of Woodhaven and Queens Boulevard in Queens. Approximately half a block from this intersection, Mr. Carter told me to stop. He got out of the car and told me to drive in and park on the parking lot.

I drove to the parking lot and parked and Mr. Carter walked to it.

Q What parking lot are you referring to?

A The parking lot of the Wetson's hamburger stand.

Q What happened after you parked?

A Mr. Carter walked up and entered the hamburger stand, and appeared to be in conversation with a white male who was later identified as Mr. Mark Reiter.

Q What else did you observe at that time?

A After what appeared to be the conversation, on two occasions Mr. Reiter walked over to a brown Skylark Buick and appeared to be in conversation with a gentleman seated in the Skylark Buick.

Mr. Carter returned to the car and told me that -- told me that something or someone was in the area, and that his people were afraid of a ripoff or robbery, and that the

deal would not go at that time at the hamburger stand.

Q What happened after that?

A He then returned, and also he said it would be necessary for me to front the money.

Q What do you mean by that?

A Meaning to give the money to the individual prior to receiving the narcotics.

Q What happened after you had that conversation with Mr. Carter?

A He then returned to Mr. Reiter and again entered into conversation.

Shortly, he returned to the car, and we then left the area.

Q Did you have a conversation after you left the area with Mr. Carter?

A Yes, en route back to the vicinity of 19th Street, Mr. Carter told me that the heroin was in the brown car but that they were very skeptical and fearful of the robbery, and that the deal would go later that evening in the vicnity of 57th Street and Second Avenue. Also that it would be necessary for him and his people to see the money and that it would be okay if I did not front.

Q Did he give you a time at which you were to meet him?

A Yes, he did.

Q When was that?

A The time was approximately nine o'clock. He said to meet him at nine.

Q Did there come a time when you went to the vicinity of 57th Street?

A Yes, I did.

Q When was that?

A I arrived in the vicinity of 57th and Second Avenue approximately 8:30.

Q What happened after you arrived at that location?

A Upon arriving at the location, I observed Mr. Carter exit an automobile and walk across the street toward where I was seated with the informant in the official government vehicle.

Q Did you have a conversation with Mr. Carter at that time?

A Yes, I did.

Q What did you say to him and what did he say to you?

A Mr. Carter told me that his man would be arriving at approximately nine o'clock, and that it was no problem, the deal would go.

He then reiterated that it would be necessary to see the money, and approximately 8:50 he exited the official

government vehicle and walked north on Second Avenue across 57th Street and out of my view, entering into a sandwich shop.

Q Did you have money with you on that occasion?

A Not at that time.

Q Did there come a time that you got money?

A Yes.

Q What happened at that time?

A I was provided with approximately $30,000 of official advance funds, and upon Mr. Carter's return from the sandwich shop, I showed him the $30,000.

He then left and went back up to the sandwich shop for a short time, and he returned and he was standing alongside the car.

A white, I think 1970, Eldorado Cadillac pulled up, oh, a parking space or two in front of where the official government vehicle was parked.

Mr. Carter told me to get into the car, that the transfer would go down on 55th Street between Second Avenue and Third, between Second and Third Avenue.

Q Agent Pope, had you discussed with Mr. Carter whether the $30,000 was for the three kilograms of heroin that you had ordered from him?

A We had discussed that since this was the first

time and that I would not front the money, that the delivery would be made one kilo at a time, that I would receive the one kilo, be able to test it, and pay for it, and approximately one hour later I would receive the second kilogram, test it, pay for it, and so on.

Q How much were you to pay for each kilogram?

A $30,000.

Q What happened after you got into the Cadillac?

A I was introduced to Mr. Reiter.

Q Do you know his full name?

A I believe it is Mark Reiter.

Q Did you have a conversation with Mr. Reiter at that time?

A Yes, I did.

Q What did he say to you and what did you say to him?

A Mr. Reiter --

MRS. ROSNER: Objection, if your Honor please.

MR. NESLAND: Subject to connection, your Honor.

THE COURT: Yes, it is subject to connection.

A Mr. Reiter drove south on Second Avenue to 55th Street and west on 55th Street to approximately the middle of the block.

He told me that he did not like to do business

this way, that the normal way was for him to have the money fronted, that he would like to see the money.

At this time I showed him the $30,000.

He parked the car and exited and walked east on 55th Street towards Second Avenue, and he was lost from my view.

Q Did there come a time that he returned to your automobile?

A Yes.

Q What happened at that time?

A Approximately 20, 30 minutes later, he returned, or I observed him getting out of a brown Buick which was parked approximately three carlengths behind where his car was parked where I was seated.

He exited the car on the driver's side, walked down the street to his car, entered the driver's side of his car, and removed from under his coat a brown paper bag.

He handed me the bag about floor level, and I opened the bag, and I observed two plastic bags containing suspected heroin.

Q What happened after you received that from Mr. Reiter?

A I told Mr. Reiter to blink his headlights, which was a signal for the informant to return to the car.

The informant did not observe the signal and I exited the car with the suspected heroin and walked toward where the official government vehicle was parked.

At this time I gave the informant the $30,000 to return back to the car while I tested the heroin.

Q Did you test it?

A Yes, I did.

Q What kind of test did you perform?

A Marquis reagent test.

Q What was the result of that test?

A It was positive.

Q What do you mean by the term "positive"?

A It showed a color that was positive for an opium derivative, an opiate.

Q What happened after you tested it?

A The signal was given that I had received the package via car communication radio, and the arrest was effected.

MR. NESLAND: May I have this marked Government Exhibit 56 for identification.

(Government Exhibit 56 marked for identification.)

MR. NESLAND: May the record reflect that Government Exhibit 56 for identification is a clear plastic bag which is sealed, and that I am now cutting it open at one

end with scissors.

MR. LaROSSA: Will your Honor note my objection to this, please.

THE COURT: What to? To his cutting it?

MR. LaROSSA: To this whole procedure. I know it is being taken subject to connection.

THE COURT: All right, I am taking it subject to connection.

MR. NESLAND: May the record reflect that I am now removing the contents of Government Exhibit 56 for identification, the plastic bag.

May I have this marked Government Exhibit 56-A for identification.

(Government Exhibit 56-A marked for identification.)

MR. NESLAND: Government Exhibit 56-B for identification.

(Government Exhibit 56-B marked for identification.)

MR. NESLAND: Government Exhibit 56-C for identification.

(Government Exhibit 56-C marked for identification.)

MR. NESLAND: Government Exhibit 56-D for

identification.

(Government Exhibit 56-D marked for identification.)

MR. NESLAND: May the record reflect that Government Exhibit 56-B for identification is a lock-seal envelope which is open at one end, and its contents, if any, removed.

Government Exhibit 56-C for identification is a lock-seal envelope which is open at one end, and that I am removing from Government Exhibit 56-C for identification a clear plastic bag full of white powder and ask that that be marked Government Exhibit 56-E for identification.

(Government Exhibit 56-E marked for identification.)

MR. NESLAND: May the record reflect that Government Exhibit 56-D for identification is the lock-seal envelope which is open at one end and I am removing from Government Exhibit 56-D for identification a clear plastic bag of white powder which I would ask to be marked as Government Exhibit 56-F for identification.

(Government Exhibit 56-F marked for identification.)

Q Now, Agent Pope, I show you what has been marked Government Exhibit 56-F for identification, Government Exhibit 56-E for identification, and Government Exhibit 56-A

for identification.

Do you recognize Government Exhibit 56-F for identification?

A Yes, I do.

Q How do you recognize it?

A By my initials.

Q What is it?

A Pardon?

Q What is Covernment Exhibit 56-F for identification?

A This is a half kilogram of suspected -- well, heroin, purchased on the 10th or received on the 10th from Mr. Mark Reiter.

Q I show you Government Exhibit 56-E for identification. Do you recognize it?

A Yes, I do.

Q What is Government Exhibit 56-E for identification?

A The remaining portion of the delivery made to me by Mr. Reiter on the 10th of February.

Q How do you recognize it?

A My initials.

Q I show you Government Exhibit 56-A for identification. Do you recognize it?

A Yes, I do.

Q What is it?

A It is the bag that contained the two packages of heroin that was delivered to me by Mr. Reiter on the 10th of February.

Q It contained Government Exhibit 56-E for identification and 56-F for identification?

A That is correct.

Q How do you recognize it?

A By my initials, J.B.P.

Q I also show you what has been marked Government Exhibit 5-D for identification and ask you if your recognize it.

A Yes, I do.

Q What is it?

A It is the lock-seal envelope in which I placed the heroin at the time of or after returning to the office where it was processed and delivered to the chemist.

Q Did you do that on the night that you received it from Mr. Reiter?

A Yes, it was placed in the safe overnight and delivered to the chemist the following day, I believe.

Q Did you deliver it to the chemist?

A I did.

Q In what condition was Government Exhibit 56-D for identification when you delivered it to the chemist?

A Sealed.

Q At the time you delivered it, Government Exhibit 56-F for identification, 56-E for identification, were placed in 56-D for identification?

A That is correct.

MR. NESLAND: At this time, your Honor, the Government offers 56-A for identification, 56-E for identification, and 56-F for identification into evidence.

MR. LaROSSA: Objection.

THE COURT: Received subject to connection.

MRS. ROSNER: Your Honor, may I inquire whether the Government's offer includes any of the writings or notations on any of the exhibits?

THE COURT: The writings are not included.

MRS. ROSNER: Same objection as Mr. LaRossa's.

MR. MITCHELL: Same objection.

MR. PELUSO: Same objection.

MR. DUKE: Same objection.

THE COURT: Same ruling.

(Government Exhibits 56-A, 56-E, and 56-F received in evidence.)

THE COURT: Is there anything further of this

witness?

MR. NESLAND: That is all the questions I have.

THE COURT: Will there be any cross-examination?

MR. LaROSSA: I have no questions.

MRS. ROSNER: No questions.

MR. MITCHELL: No questions.

MR. PELUSO: No questions.

MR. DUKE: No questions.

THE COURT: No questions by any of the defendants. Therefore you are excused for all purposes. You may go.

(Witness excused.)

THE COURT: Ladies and gentlemen, that brings you to the luncheon recess and we will resume at two o'clock. You are excused.

(Luncheon recess.)

AFTERNOON SESSION

(In open court; jury present.)

MR. NESLAND: Mr. Stromfeld.

S T U A R T S T R O M F E L D , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NESLAND:

Q Mr. Stromfeld, by whom are you employed?

A United States Justice Department, Drug Enforcement Administration, previously the Bureau of Narcotics and Dangerous Drugs.

THE COURT: Just a moment.

Q In what capacity are you employed?

THE COURT: Just a moment. I have Court's Exhibit 18 just handed up.

(Court Exhibit 18 marked.)

THE COURT: Motion denied.

Q In what capacity are you employed?

A Supervisory agent.

Q For how long have you been an agent of the Drug Enforcement Administration?

A Over six years.

Q I'd like you to direct your attention to February 10, 1972. Were you on duty at that time?

A Yes, I was.

Q I would further like to direct your attention to 11:00 a.m. What happened at that time?

A At that time I was in the company of two confidential informants working under my direction at that time. And I instructed them to telephone one Paul Carter --

MR. LaROSSA: Objection.

THE COURT: Strike out what you instructed them to do. Is it correct that you gave certain instructions at that time?

THE WITNESS: Yes.

Q Did they make a telephone call?

A Yes.

Q I direct your attention to approximately 12:30 p.m. on February 10, 1972. Where were you at that time?

A I was in the area of 19th Street and Second Avenue in Manhattan, New York City.

Q In what capacity were you working at that time?

A I was the head of a surveillance team operating in that area.

Q What did you observe while you were in that vicinity at 12:30 and thereafter?

A I observed those same two confidential informants I mentioned before, and now in the company of Special Agent

John Pope, park in the area of -- on Second Avenue in the area of 19th Street and proceed to Artie's Ice Cream Parlor located on the southeast corner of 19th Street and Second Avenue.

Q What did you observe at that time?

A I observed that they were in there for awhile. A few minutes later I observed them exit, now in the company of Paul Carter.

Agent Pope and the two informants returned to their vehicle, and Carter walked towards his residence on 19th Street between Second and First Avenue.

I then met with the two informants and Special Agent Pope at a prearranged location.

Q I direct your attention to approximately 3:30 in the afternoon. Where were you at that time?

A Again I was on duty in the area of Artie's Ice Cream Parlor, again part of a surveillance team.

Q What did you observe at that time?

A I observed Special Agent Pope, in the company of only one of the confidential informants at this time, park in the area of 19th Street and Second Avenue, meet with Carter, and then all three -- that is, Special Agent Pope, the confidential informant, and Carter -- entered the car and drove out of the area.

Q Did you follow them?

A I did.

Q Where did they go?

A Well, they immediately went around to First Avenue, at which time they stopped and the confidential informant got out of the car and walked across the street or walked over to Group Supervisor Victor Maria, who was supposed to be the moneyman in the negotiations. And he got in the car with Maria. I continued to follow Mr. Pope and the government informant, and I followed them to Woodhaven Boulevard -- I'm sorry.

Q Who did you say was in the car with Agent Pope?

A Carter, I'm sorry. I followed -- I followed Carter and Agent Pope to Queens Boulevard just shy of Woodhaven Boulevard, at which time Agent Pope stopped the car and Paul Carter got out. Agent Pope then drove into the Wetson's parking lot and parked.

Carter walked past the parking lot and entered the Wetson's hamburger stand.

Q Are you familiar with the area of the Wetson's hamburger stand?

A Yes, I am.

Q Do you know what buildings, if any, are immediately located in that area?

A Yes, directly across the street from the hamburger

stand at Woodhaven and Queens Boulevard where they cross was the Omaha Diner. It is no longer there anymore.

Q Was it there at that time?

A Yes, it was.

Q Can you tell us what happened after Agent Pope parked in the Wetson's parking lot?

A I observed Carter enter the Wetson's at which time I drove around the corner and parked on Hoffman Drive. While I was parking, I observed a 1971 Buick Skylark, brown in color, License Plate 4419AF,park directly in front of me. I observed two men in it.

I observed Louis Mileto driving and at the driver's seat, and I observed Mark Harvey Reiter in the passenger seat.

A minute or so later I observed Mileto get out of the car, and Reiter get out of the car. Mr. Mileto went over to a phone booth right next to his car while Mr. Reiter walked into the Wetson's and joined Paul Carter.

I observed Mileto make his phone call. I stood in that position a few minutes and then I walked over towards the Wetson's and still observed Carter and Reiter conversing.

A few minutes later, both people left the Wetson's. Carter went back towards Agent Pope in the parking lot, and Reiter returned to Louis Mileto and conversed.

A few minutes later I observed Reiter go back to the

Wetson's and while he was going back I observed Carter, now in the company of the government informant, walking towards Wetson's.

Carter walked into Wetson's and the government informant kept walking past the Weston's towards Woodhaven Boulevard.

I then observed Carter and Reiter converse, I believe it was about a half hour or so, and during that conversation on two separate occasions I observed Mark Reiter leave the Wetson's and join -- and join Louis Mileto at the 1971 Buick.

They conversed at both those times, and again at both those times Reiter immediately returned to Paul Carter.

After a few more minutes of conversation, I observed Reiter leave Paul Carter, Carter walked towards Pope in the parking lot, and Reiter returned to Louis Mileto.

I then followed Louis Mileto. Carter got in the car. Louis Mileto drove to Woodhaven, made a right turn, drove down, made a U-turn, came back, and dropped Reiter off at about Queens Boulevard and directly across the street from the Wetson's.

Q Where did Reiter go?

A Reiter went right back into the Wetson's into the parking lot this time, and got into a late model white Eldorado. Reiter then left the parking lot and I instructed

all the agents to discontinue surveillance.

Q Did there come a time approximately 8:30 on February 10 that you again conducted surveillance?

A Yes.

Q Where were you located at that time?

A I was located in the area of 57th Street and Second Avenue in Manhattan. I personally was located in the School of Performing Arts located on the southwest corner of 57th Street and Second Avenue, and I had command of both 57th Street and Second Avenue, as I was in the offices in the corner and it gave me a panoramic view of both 57th Street and Second Avenue both up and down.

Q What did you observe while you were located in that place?

A Around the time that you mentioned, I observed Agent Pope and the government informant park on Second Avenue directly in front of the window I was in, and a few minutes later I observed a different while Eldorado, I believe it was a '71 white Eldorado convertible -- this time it was a convertible -- pull up on 57th Street just shy of Second Avenue.

He was heading in an easterly direction and I saw Paul Carter get out of the car.

Paul Carter met with the government informant and

Agent Pope, and they went into the car. They were all in the car.

Q What kind of car was that?

A The government car? I believe -- which car are you asking about?

Q No, proceed.

A All right. They conversed for awhile and I observed Paul Carter get out of the car. He walked across the street, went into a Wetson's, stayed in the Wetson's awhile -- excuse me, not a Wetson's. A White Tower deli that was located on the northwest corner directly across the street from the school.

He went into the deli, sat down for awhile, and then a short time later I observed Mark Reiter, the same person I had seen at the Wetson's in Queens earlier that day, walking, and he walked into the coffee shop or the hamburger stand, and he sat down and conversed with Carter for a few minutes.

After a few minutes I observed Carter and Reiter get up, leave the White Tower Deli, walk on 57th Street in a westerly direction. Mid-block they stopped, conversed for a second, and then I observed Carter walk back towards the direction where I was, in the undercover vehicle, and I saw Reiter continue walking.

At that time Carter joined Pope and the government informant in the undercover vehicle. After a few minutes I

observed the informant and Carter leave the car and walk into the White Tower Deli on 57th Street. They sat down. It appeared to me that they were drinking something, probably -- they were drinking something and they stood there awhile. I then observed Mark Reiter pull up on Second Avenue and I observed Carter go outside and join him.

A minute or so later, Carter motioned to the informant and he went outside and all three of them conversed. That is, Reiter, Carter and the informant.

Q What kind of car did Reiter have?

A He had that same Eldorado that I saw him drive at the Wetson's. It was a late model white Eldorado.

Q What happened after that?

A A few minutes later I observed Carter and the informant walk down Second Avenue back to the undercover vehicle. At this time I observed Special Agent Pope come out of the car and Group Supervisor Victor Maria come out of the car, and they all met. And I observed them show a quantity of money to Paul Carter.

At this point I received a phone call and I left the observation post in the high school.

Q Where did you go in that time?

A I got in my government car and I drove around the block and I got behind Mark Reiter's car which was still

parked on Second Avenue between 57th and 58th Street.

Q Where did you go after that?

A A minute or so later I followed Mark Reiter's car to 55th Street and Second Avenue, where he made a right turn.

Now, at this point, in Mark Reiter's car Mr. Pope had joined Mark Reiter in his car in the trip down. Mr. Pope had joined him, and so had Carter.

Q So that who was in the car when you followed it to 55th Street and Second Avenue?

A Carter, Pope and Reiter were in Reiter's car.

And they pulled over as soon as they made the turn and a minute later I observed the undercover vehicle make a turn on 55th Street and park directly in front of them. At this point --

Q Who was in the undercover vehicle?

A Mr. Maria and the government informant.

Q What happened after they arrived at that vicinity?

A At that point I got out of my car again and I walked into a building directly across the street, and I gained access from one of the tenants to their apartment on the ground floor. I positioned myself in the window and I saw -- again I could see both cars very well; a minute or so later I saw a car make a turn. I couldn't actually see the car. All I could see were the headlights, and I observed it

park a few cars behind Reiter's car.

I observed Reiter get out of the car, walk back, and a couple of minutes later I observed Reiter get out of the car that I saw park, walk back up the block. At this time he had a bulge under his coat like under his arm he was carrying it under his jacket, something under his jacket.

MR. MITCHELL: Objection, your Honor.

A He got into his car --

THE COURT: Objection overruled.

Go ahead.

Q Proceed.

A He got into his car. A minute later I observed John Pope get out of his car, out of Reiter's car, carrying a brown paper bag, and walk directly to Vic Maria's car. That was the undercover vehicle.

He got in the undercover vehicle and simultaneously the government informant walked back to Reiter's car, got in Reiter's car.

I immediately left the apartment, walked outside, started walking across the street, and while I was walking across the street to position myself on the sidewalk, a pre-arranged signal was given and I effected the arrest of Paul Carter. And while I effected the arrest, Special Agent Anthony Reuera simultaneously effected the arrest of Mark

Reiter, who was on the driver's side of the car.

At that point I seized $1,000 of government funds from Paul Carter. He was in the back seat apparently counting the money. It looked like he was counting it when I got up there. As soon as I got there, he threw it on the floor.

Q Was that part of the money that Agent Pope had, if you know?

A That's correct, that was part of the money Agent Pope had.

Q What happened after you arrested Paul Carter?

A As soon as I secured Paul Carter, I left him with another agent. I walked back to the car that I saw making the turn. I walked up and when I got closer I recognized it as the same Buick I had seen earlier at Wetson's that day in Queens.

Q What kind of Buick?

A It was a 1971 Buick Skylark, brown in color, License Plate 4419 AP.

Q What happened after you came up to the car?

A I looked inside and I observed somebody lying down in the front seat. I tapped on the window. There was no response. I tapped a little harder and shouted. And finally I saw Louis Mileto sit up.

Q What did you do then?

A I then took him out of the car and placed him under arrest. Informed him of his rights, and took him to the office of the Bureau of Narcotics and Dangerous Drugs, 90 Church Street.

Q I'd like to direct your attention to April 28, 1972. Were you on duty at that time?

A Yes, I was.

Q In what capacity were you acting on that date?

A Part of a surveillance team.

Q Directing your attention to approximately 2:00 p.m., where were you?

A In was in the Hotel Wellington on Seventh Avenue and about 54th Street, 55th Street; 55th Street.

Q Could you describe for the Court and jury the vicinity in which you were located?

A Yes, it was Seventh Avenue. It was the area of Ballantine's Barber Shop, the Gold Rail Bar, and it was the area where Herbert Sperling --

Q Did you observe anybody in that area at the time you set up?

A Yes, about the time you mention, I observed a late model Continental park in front of Ballantine's Barber Shop. A moment later I observed Herbert Sperling get out of the Continental, walk onto the sidewalk, and join Norman Goldstein,

Carlo Lombardi, and Benjamin Mallah.

Q Is the man that you mention as Benjamin Mallah in the courtroom today?

A Yes, he is.

Q Would you please point him out for the Court and jury?

A This gentleman with the glasses and the moustache with the brown suit on with the yellow shirt and brown striped tie.

Q Did he look then like he looks now?

A He looked the same except for the moustache.

Q Can you tell me what he was wearing on that occasion?

A He was wearing sport clothes, I believe they were blue and green in color.

Q What happened after you observed them talking with one another?

A Well, after a few minutes while they were talking I observed Herbert Sperling take a brown package and put it in the right front seat of his Continental. Then he came back out and continued conversing.

While they were conversing for awhile, Mark Reiter, the same person that had been arrested with the kilo of heroin on February 10, appeared, came up to the barber shop,

conversed with Mr. Sperling, Mr. Goldstein; I don't remember if he spoke to Mr. Mallah or not.

He conversed with the general crowd on the corner. He was there with his wife and kids, I believe, or maybe just his kids. I don't remember exactly. They conversed a few minutes and then I observed Mark Reiter leave.

A few minutes later I observed Carlo Lombardi, Norman Goldstein, Benney Mallah, and Herbert Sperling conversing with each other, at which time I observed Norman Goldstein take out a set of keys from his pocket, pick out one of the keys, hold the group of keys by the one key, and hand it to Herbert Sperling.

Herbert Sperling took the key, put it in his pocket. Then he and Ben Mallah got in the Continental and drove south on Seventh Avenue.

Q Did there come a time that Herbert Sperling and Benjamin Mallah returned to the scene?

A Yes, they returned maybe a half hour or so later.

Q What happened at that time?

A As soon as they returned, again they got out, of course they got out of their cars and immediately joined Norman Goldstein and Carlo Lombardi, and at this point Herbert Sperling took the key or a key and handed it to Norman Goldstein.

Norman Goldstein took the key, conversed a few more minutes, and then he and Carlo Lombardi left the area. They walked and made a turn on 54th Street and left the area.

Q What did you do after that?

A We continued surveillance. We were not mobile as of yet. We were still operating out of the hotel room.

At this point we set up surveillance in the street and left a few units in the hotel to advise us what was going on.

Q What happened after that?

A Well, later, after receiving a radio transmission, I followed Ben Mallah to 16 --

MR. LaROSSA: I object and move that be stricken.

THE COURT: What are you moving to strike?

MR. LaROSSA: "After receiving a radio transmission."

THE COURT: Those words?

MR. LaROSSA: Yes, sir.

THE COURT: Strike that out.

Continue. You followed Ben Mallah?

Q Did there come a time that you followed Benjamin Mallah?

A Yes, I followed Benjamin Mallah to 1650 Broadway. He entered the building. A while later he came out in the company of a person I didn't know at the time, and still I am

not too sure about now. He came out of the building --

MR. LaROSSA: I object and move that be stricken.

THE COURT: What, that he still doesn't know?

MR. LaROSSA: "A person that I didn't know and I am now not too sure of" are the words he used.

THE COURT: All right. We will strike that out. He didn't know the man.

Q Did he meet with someone?

A Yes, he met with --

Q What did you observe at that time?

A Then he walked across the street to the City Squire Hotel, Motel, followed him into the lobby. Then came outside, sent another agent in, and a few minutes later I went back in the lobby myself, observed him meet at that time a third party. This party was carrying an attache case, wearing a windbreaker with a shirt and tie and slacks.

They conversed for a second or so. Then the party that came out of 1650 Broadway with Ben Mallah, and the party with the lumberjacket and the attache case walked out onto Seventh Avenue and got into a taxicab. And Mr. Mallah walked out onto Broaday, and got into his own car.

Both then proceeded south. I could not get back to my car in time to follow them.

Q Did there come a time that you saw them again?

A Yes.

Q What happened on that occasion? Was that the same day a little later?

A A little later that afternoon.

Q What happened at that time?

A Ben Mallah returned to the barber shop, got out of his car and again was standing on the corner conversing with Herbert Sperling and other people.

Q What happened after that?

A A few minutes later, Ben Mallah got back in his car, and then myself and Special Agent Lunsford followed him downtown to the area of Little Italy, Mulberry Street.

MR. LaROSSA: Objection. Move that be stricken.

THE COURT: Did you follow them or somebody else follow them?

THE WITNESS: I followed them.

THE COURT: You followed them.

Motion denied.

MR. LaROSSA: I am not moving with respect to that. With respect to the characterization of where he followed them.

THE COURT: Well --

Q Where did you follow Mr. Mallah to?

THE COURT: What street did you follow him to?

Strike out the characterization.

What street, what geographical area did you follow him to?

THE WITNESS: Mott Street, Mulberry Street, Broome Street.

THE COURT: In that area?

THE WITNESS: That area. Grand Street.

Q Who was with you on that occasion?

A Special Agent William Lundsford.

Q What happened after you had arrived in that vicinity?

A Well, during the trip down there, if I may note, he went through a couple of red lights.

MR. LaROSSA: Objection. Move that it be stricken.

THE COURT: Strike that out.

A When he got down there later on, we set up surveillance on his car. He had left his car by the time we had gotten into position, and we sat on his car. A few minutes later Herbert Sperling showed up, and met with Herbert Sperling. They conversed. While they were conversing, they met with two other people I didn't know. Then they conversed a little while longer.

During the conversation, while they were conversing, I instructed some agents to follow them and I remained in the car. And then they just walked through the block, Mallah and Sperling.

Q Who followed them?

A Special Agent Bill -- I don't remember his last name offhand.

Q What happened after that?

A They conversed. At one point they got in their car and drove around the corner and came back to exactly where they were, or on the side street of where they were, and they got out of their car and talked some more.

Q Where were they at this time?

A In the area of Broome Street, Mott Street, Kenmare Street.

After they finished conversing, I observed Herbert Sperling get in the car, and it appeared that he was leaving the area. At this time we discontinued surveillance.

Q Would you describe to the extent you can recall, what Mr. Sperling was wearing on that occasion?

A Mr. Sperling -- my recollection is not too strong, but he was wearing sport clothes. I believe he had white shoes on. I don't remember exactly what he was wearing.

Q Do you recall what Mr. Mallah was wearing at that time?

A Yes, he wore, I believe, a green and blue sport outfit, meaning a shirt, dark. I believe the slacks were darker. And shoes. Matching shoes.

Q I direct your attention to April 14, 1972. Were you on duty on that day?

A Yes, I was.

Q Approximately 5:00 a.m. in the morning, where were you?

A I was in the area of Herbert Sperling's residence, Lee Place in Bellmore, Long Island.

Q What did you do on that date?

A A few minutes after we arrived in the area I observed Herbert Sperling driving in his, I believe it was a brand new Mercedes-Benz. It may have been a 450 SEL or a 350 SEL.

I observed him arrive home at that time. When he started to go in his driveway I drove up, and myself, Special Agent Clark, Sergeant DeLuca, Patrolman Lino, Special Agent Moriarty, effected the arrest of Herbert Sperling. I personally took him out of the car and placed him under arrest.

Q Was anything seized in the glove compartment of Mr. Sperling's car?

A Yes, --

THE COURT: Just say yes or no.

Q Without telling us everything that was seized, was a pair of gloves seized?

A Yes. Surgical gloves.

MR. DUKE: Objection.

THE COURT: If the objection is on the ground of leading, I am at this point going to permit the Government to do that.

MR. LaROSSA: No, it is not, sir.

THE COURT: No?

MR. LaROSSA: No.

MR. DUKE: Neither is mine.

THE COURT: What?

MR. DUKE: My objection is not on that basis either.

MR. LaROSSA: Should we write out what it is?

THE COURT: Yes.

I think you are aware, Mr. LaRossa, of what I have in mind?

MR. LaROSSA: Subject to connection?

THE COURT: In being specific.

MR. LaROSSA: Yes, I do.

In addition to that, your Honor, I have an objection.

THE COURT: All right.

Can you come back to this point while they are busy writing those things out?

MR. NESLAND: This is the last thing that I have to cover with this witness.

THE COURT: All right.

I am going to sustain the objection at this time, and if it becomes -- if you consider that you want to bring the matter up again on redirect, I will allow you to reopen the direct at that time only for the purpose of moving the case along, and I will have the benefit of counsel's written objection in the meantime.

MR. NESLAND: Then that is all the questions I have.

THE COURT: All right.

Mr. LaRossa, do you want to cross-examine?

MR. LaROSSA: Do you want me to finish this first?

THE COURT: Yes. I say, do you want to cross-examine?

MR. LaROSSA: Yes, I do. Did you want me to finish the note first?

THE COURT: Yes, go ahead.

(Court's Exhibit 19 marked.)

THE COURT: And Court's Exhibit 20 is received.

(Court's Exhibit 20 marked.)

THE COURT: I will sustain the objections.

CROSS-EXAMINATION

BY MR. LaROSSA:

Q Mr. Stromfeld, you told me that you saw Mr. Mallah enter a building at 1650 Broadway?

A Yes.

Q Is that right; did I get the address correct?

A That's one of the addresses.

Q 1650 Broadway?

A Yes.

Q Where is that, please?

A It is on 52nd Street and Broadway.

Q Is it an office building?

A Yes, with a side entrance only on 52nd Street, and that has an address also.

Q Is it an office building?

A Yes.

Q And you said that sometime later you saw him exit that building with another person?

A That's correct.

Q Did you arrest that other person?

A No.

Q Certainly no one sitting here, is it?

A Certainly --

Q The other person.

A No.

Q Then you told us that you saw him sometime later that day at the City Squire Motel?

A Immediately following what you just said, I saw him.

Q But later, after you saw him at 1650 Broadway; right?

A Simultaneously. He just walked across the street.

Q And he met a person, you said a person with a windbreaker; right?

A That's correct.

Q Did you arrest that person?

A No.

Q Is that person in the courtroom?

A No.

Q Did you hear any of the words Mr. Mallah said that day?

A Personally, no.

Q You didn't place him under arrest that day, did you?

A No.

Q You didn't apprehend him or stop him in any way?

A No.

Q You told us that he and Mr. Sperling left the area of the barber shop at one point. Were you watching Mr. Sperling at that point?

A Yes.

Q And you didn't follow the car?

A No.

Q So as you sit there now you have no idea where that vehicle went?

A It went south on Seventh Avenue.

Q Other than that?

A No.

Q What was the date you told us that you saw Mr. Mallah initially on Seventh Avenue?

A 28th.

Q Of what?

A April.

Q What year?

A 1972.

Q Is that the same day you saw him at the City Squire Motel?

A Yes.

Q What day did you see him at Broome Street?

A Same day.

Q April 28, 1972?

A That's correct.

Q In other words, all of the observations that you told us about, all occurred on the very same day?

A That's correct.

Q And when you told us about April 14, 1973, arresting Mr. Sperling, you were talking about some year later, were you not?

A One year later.

MR. LaROSSA: I have no further questions.

BY MR. DUKE:

Q Mr. Stromfeld, did you have a moustache in April of 1972?

A Yes, sir.

Q When did you grow your moustache?

A '67.

MR. DUKE: Thank you.

THE COURT: Mrs. Rosner?

MRS. ROSNER: I have no questions, your Honor.

THE COURT: Mr. Peluso?

MR. PELUSO: I have no questions.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No questions.

THE COURT: Any redirect?

MR. NESLAND: No questions.

THE COURT: Thank you. You are excused.

(Witness excused.)

THE COURT: Next witness.

MR. LAVIN: Philip Hayward.

P H I L I P D. H A Y W A R D , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Mr. Hayward, what is your occupation?

A Special agent with the Drug Enforcement Administration.

Q How long have you been employed by them?

A It will be three years in June.

Q I direct your attention to April 28, 1972. Did you go anywhere as a result of a call?

A Yes, sir. I received a call at approximately eight o'clock to assist Agent Stromfeld on a surveillance in the downtown area of Manhattan.

Q Did you go down to that area?

A Yes, sir.

Q Can you tell us what happened at that time? If anything.

A We were doing some surveillance on a green Dodge, and at approximately ten o'clock, two gentlemen were out on the street in the vicinity of Broome and Mott Street.

At that time I went on foot surveillance.

Q Did you know who those individuals were at the time?

A No, sir.

Q Can you tell us what occurred after that?

A These two individuals were talking in the middle of the street on the sidewalk. I walked past them, overheard them say --

MR. LaROSSA: Objection.

Q Can you tell us what these individuals -- I will withdraw that question.

THE COURT: I think that the objection is sound until a foundation is laid.

Q Can you tell us what these individuals were wearing?

A Yes, sir. One of them was wearing a blue sweater and gray trousers. The other one was wearing a green shirt.

Q And what kind of trousers?

A Green trousers.

Q Can you describe them physically?

A Yes, sir. One of them was about six foot, heavy-set, balding. The other one was shorter, say about 5'7"; heavy-set, also.

Q Can you tell us what happened after you observed them on the street?

A They were standing on the sidewalk. It looked like they were arguing, so I walked past them.

MR. LaROSSA: Objection. Move to strike.

THE COURT: Well, I will strike that out.

You saw them in conversation with each other?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Did you hear any of that conversation?

A Yes, sir.

Q Could you tell us what you heard?

MR. LaROSSA: Objection. Improper foundation.

THE COURT: Well, I am now in a position where the substance may sufficiently identify something, and is there no other means that you can identify this other than through the substance of the conversation?

MR. LAVIN: :Your Honor, the agent wasn't on that particular team, and --

MR. LaROSSA: I object to this.

THE COURT: Then I sustain the objection.

MR. LAVIN: I think that the testimony -- if I might --

THE COURT: No, I don't want to have any conversation about it.

MR. LAVIN: May I write out a short offer of proof?

THE COURT: Yes, and show it to counsel for the other side.

Is this the only objection, Mr. LaRossa?

MR. LaROSSA: The objection is to foundation, your Honor.

THE COURT: Well, I think --

MR. LaROSSA: I am answering the note because of what Mr. Lavin --

THE COURT: I believe if there is any connection to be made, that is a question of fact for the jury. You may ask the question.

MR. LaROSSA: You will note my objection, please?

THE COURT: Yes.

That is Court's Exhibit 21, received and filed.

(Court's Exhibit 21 marked.)

THE COURT: What conversation did you hear?

THE WITNESS: Yes, sir. One individual said, "I am taking all the risk in this thing." And the other one said, "Yes, I am only getting a few grand out of this." And that was it.

MR. LAVIN: I have no further questions.

MR. LaROSSA: I move to strike.

THE COURT: The motion is denied. It is received subject to connection with all of the facts and circumstances in evidence.

MRS. ROSNER: Your Honor, I have an additional ground of objection I'd like the record to note, and I will write it out.

THE COURT: All right, your additional ground will be marked Court's Exhibit 22.

MR. DUKE: Your Honor, I'd like to join both Mr. LaRossa and Mrs. Rosner.

THE COURT: Everybody can join.

MR. DUKE: Pardon me?

THE COURT: I say everybody can join. I will, however, instruct the jury that the conversation, if any connection is made in the course of this case, will be received only as against the defendant Mallah and not as against any other defendant in the case, but even as to him it is subject to connection in the totality of the evidence.

MR. LaROSSA: You will note my objection to that comment, please?

THE COURT: It is not a comment. That is a ruling.

MR. LaROSSA: A ruling, I am sorry.

THE COURT: All right, Mrs. Rosner's objection is noted, and the subject matter of the discussion is all, as I have indicated, received subject to connection to the limited degree I have indicated.

MR. LaROSSA: You will note I join in Mrs. Rosner's objection, if the Court please.

THE COURT: All right.

(Court's Exhibit 22 marked.)

THE COURT: Do you have any cross-examination by any other defendant?

MRS. ROSNER: No questions.

MR. PELUSO: No questions.

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MR. MITCHELL: No questions.

THE COURT: Any redirect?

MR. LAVIN: No, your Honor.

THE COURT: All right, you may step down.

(Witness excused.)

THE COURT: Next witness.

R E G I N A L D W I L L I A M S , called as a witness by the Government, was duly sworn and testified as follows:

MR. DUKE: Your Honor, I have an objection concerning the witness at this point, which I am handing up.

THE COURT: The objection is marked Court's Exhibit 23.

Item 1 is overruled. Item 3 will have to be documented. I don't recall any such item. It may exist, but I don't recall it.

Item 4 is overruled. Item 5 is overruled. Will you please advert to Item 2, Mr. Lavin, and let me know what your position is on Item 2.

I may indicate that it is now 3:00 p.m.

Go ahead.

Mr. Duke, while I am looking at this, will you please look at these papers and see if there's any documentation that you want to call to my attention in any one of

those papers in respect to Item 3?

MR. DUKE: May I see it? I have forgotten what Item 3 is, your Honor.

(Documents handed to Mr. Duke.)

THE COURT: Perhaps I should call your attention to the Government's response. It may save you a lot of time. At the foot of Court's Exhibit 23.

MR. DUKE: Your Honor, I am not in disagreement with what is stated there by the Government.

THE COURT: Doesn't that mute all your points?

MR. DUKE: I don't believe it does, your Honor.

THE COURT: Which ones still survive?

MR. DUKE: They all survive. I was aware of that when --

THE COURT: All right. Have you got anything in any of those papers that I have handed you that supports Item 3?

MR. DUKE: May I write your Honor another note on that subject?

THE COURT: So far you haven't found anything in those documents; is that right?

MR. DUKE: I have not, your Honor.

THE COURT: The documents I have handed to you were the pretrial applications; is that right?

MR. DUKE: That's what they appear to be, yes.

THE COURT: They are your papers, aren't they?

MR. DUKE: Oh, yes. I don't know whether they are all the papers I filed.

THE COURT: Why don't you check them. Count them off.

MR. DUKE: That wouldn't help me, your Honor.

(Court's Exhibit 23 and 24 marked.)

THE COURT: Is there a question pending, Mr. Lavin?

MR. LAVIN: Of the witness?

THE COURT: Yes.

MR. LAVIN: I don't believe so.

MR. MITCHELL: Your Honor, may I join in that objection?

THE COURT: You had better look at it first. You can join in it.

Show it to Mr. Mitchell.

(Document handed to Mr. Mitchell.)

DIRECT EXAMINATION

BY MR. LAVIN:

Q How old are you, Mr. Williams?

A Twenty-seven.

Q Approximately a month ago did you plead guilty in state court to a Class E felony, armed robbery?

A I did.

Q Have you been sentenced on that?

A I have not.

Q In 1966 were you convicted of assault and did you receive 60 days for that?

A I did.

Q In 1966 again were you convicted of petit larceny and did you receive six months?

A I did.

Q In 1968 were you convicted of criminal possession of dangerous drugs and did you receive six months for that?

A I did.

Q In 1970 were you convicted of burglary, attempted grand larceny, and did you receive four years for that?

A I did.

Q That armed robbery charge in New York County is with a gun; is that right?

A It was.

Q You have been arrested many times for possession of drugs, have you not?

A I have.

MRS. ROSNER: Objection to the form of the question only, your Honor.

THE COURT: Overruled.

Q Do you know an individual named Herbert Sperling?

A Herbert Sperling? I do.

Q In 1971, did you have occasion to meet Mr. Sperling downtown New York?

A I did.

Q Can you tell us where that was?

A The early part of December 1971, on Seventh Avenue between 54th and 55th Street.

Q Did you meet anybody else at that time?

A Yes.

Q Who was that?

A Louis Mileto.

Q Did you have a conversation with Mr. Sperling?

A At that time I did.

Q Will you tell us what he said to you and what you said to him?

MR. LaROSSA: Objection.

THE COURT: Received subject to connection on Count 1.

A Can I answer?

Q Yes, please.

THE COURT: The Court has received Court's Exhibit 25.

(Court's Exhibit 25 marked.)

THE COURT: Go ahead.

A I just came home from the four-year sentence. Prior to going upstate I had met Herbie.

Q Just tell us what was said at that time.

A At that time? I just came home. He said he was glad to see me, did I want to get on my feet, did I want to do anything, did I have any money. I told him that I didn't, I had no money, and, you know, he wanted to know did I want to, you know, get in business, did I want to sell any narcotics.

So I told him I did.

So we rapped for awhile longer. He told me to wait in the restaurant. I waited. He went outside. He brought Louis back in. He introduced us. Told Louis that I was his man, that we had been in the can together, and that -- to set it up for me to pick up that night.

Herbie left,me and Louis rapped. We had arranged to meet for that night and I gave him my phone number where he could contact me at my mother's house.

About 10:30 that night he called. The meeting that we had set up was canceled. That was Friday. And he set it up for Monday night.

I stayed home Monday night, must have been December 6, 1971. I had been home seven days. That's why I remember the date.

That night he told me to go to the Neptune Diner in

Astoria, Queens, and to meet him there at twelve o'clock.

So I went there, I met him, and he gave me a package.

Q Who gave you a package?

A Louis.

Q What did you do with thepackage after he gave it to you?

A I took it back uptown, had it tested.

Q How did you have it tested?

A I had someone shoot some. And they told me that it was coke.

MR. LaROSSA: I object and move that this be stricken.

THE COURT: Who told you that?

THE WITNESS: The person that I had test it.

THE COURT: Strike it out.

Q Did Mr. Mileto say anything at the time he gave you the package?

A Yes, he told me what I owed for the package, which was $1500, and that I had ten days to get it.

Q Did you sell any of that?

A I did.

Q How much did you receive from the sales?

MR. LaROSSA: Objection.

THE COURT: Sustained.

Q Did you ever return to the barber shop on Seventh Avenue?

A Sure.

Q How often did you go down there?

A Figure from December '71 up until April of 1973 I was there at least three times every week with the exception of six weeks that I was in jail on a violation of parole.

Q Do you know an individual named Barney Barrett?

A Barney Barrett, sure.

Q Do you see Mr. Barrett in the courtroom?

A Sitting over there.

Q Would you identify him, please, by his clothing, if you can?

A With the blue sport jacket and the blue shirt.

MR. LAVIN: May the record reflect that the witness has identified the defendant Barney Barrett.

THE COURT: Yes.

Q Did you ever meet an individual named Carlo Lombardi?

A Carlo Lombardi, I did.

Q Where did you meet him?

A Down around the Gold Rail on Seventh Avenue.

Q Did you ever have any dealings of any kind with Mr. Lombardi?

A Yes.

MR. LaROSSA: Objection.

THE COURT: That's too broad. Narrow it, please.

Q Did you have any narcotics transactions with Mr. Lombardi?

MR. LaROSSA: Objection.

THE COURT: Received subject to connection.

THE WITNESS: Can I answer that?

THE COURT: Yes.

A In the summer of '72, or rather the spring, late spring of '72.

Q Can you tell us about that?

A There came a time when Herbie didn't have access, or said he didn't have narcotics. And, you know, I would either go downtown on Monday, Wednesday and Friday, or else I would call him if I couldn't make it. He'd tell me whether to come down, whether he had anything or not.

So, this particular day, I believe it was in May, I called and he told me to come down, that everything was all right. I came down, and he introduced me to Carlo, and maybe seven, eight days later I came down, I had called him and he told me to come down, that he was straight, that he had some stuff.

And I went down, saw Herbie, we rapped, he sent me in the bar, maybe 15 -- he sent Carlo somewhere else. Maybe

15,,20 minutes later Carlo came back with a package.

Q What did you do?

A Took it home, had it tested, and found out, you know, if it was what they said it was.

THE COURT: Just a minute.

MR. LaROSSA: I object, move that it be stricken.

THE COURT: He hasn't been allowed to answer, but if there is any implication from an attempt to answer, that is stricken.

Q Were you paid for that?

A Did I pay for it?

Q Yes.

A Yes, I did.

Q How much were you paid for that package?

A $2500.

Q Did you pay for it?

A Yes, I did.

Q Who did you pay?

A Herbie.

Q I direct your attention now to December of 1972. Did you again have occasion to go down to the barber shop?

A I did.

Q Can you tell us who you met with during that time?

A The day that I went down I met Herbie and Barney.

And I remember the date. The date was the 22nd. It was a Friday. Christmas was a Monday that year. And there came a time when Herbie didn't have anything, you know, and so when he didn't have nothing, like I didn't sell nothing. So, like I kept telling him that I needed a package because I had to sell some, you know, get some money for Christmas and take care of expenses. So he promised me that I would have it before Christmas. This was Friday. Christmas was on Monday.

We went down -- I went down, rather. I saw Herbie. He told me that he was having problems with the stuff that he had, and that he had some friends who had something, for me to wait around.

So I waited around. I went inside. Me and Barney rapped for awhile. Then Herbie came and called Barney outside. Then he called me outside. He sent Barney somewhere. He called me outside.

MR. MITCHELL: I object to where he sent Barney, your Honor.

THE WITNESS: Well, he sent Barney away from us.

Q All right. What happened after that time?

A Herbie pointed down the street, two fellows were coming down the street. He said, "Here he comes now," you know, the two fellows went in the bar. Barney came back and went in the bar. Before he went in he told me to wait five

minutes and come in five minutes after he got inside.

I waited a couple of minutes. Barney came back to the door, told me to come inside and come with him into the bathroom. We walked toward the bathroom. In the back of the bar there was a piano. The two fellows that came in were standing at the piano with a shopping bag. As me and Barney walked past, Barney stopped. I went in the bathroom. Maybe five, ten seconds later Barney came in the bathroom behind me, gave me a half a kilo. I came out, nodded at Herbie, and left.

Q Were you supposed to pay for that package?

A Yes.

Q How much?

A $8500.

Q What did you do with the package after you received it?

A Took it home.

MR. LaROSSA: Objection.

THE COURT: I think the question is too broad, Mr. Lavin.

Q Where did you go with the package after you received it?

A Got in a cab and went to my apartment.

Q Did you do anything with that package physically?

A Yes, I tested it myself. Because he had told me

that it wasn't up to par.

THE COURT: Just a minute.

MR. MITCHELL: Objection, your Honor.

THE COURT: Strike the "because."

You tested it, period.

A Tested it.

Q What did you do after you tested it?

A After I tested it?

Q Yes.

A I cut it and we bagged it up.

Q Did you sell it?

A I did.

MR. LaROSSA: Objection.

THE COURT: I am going to strike that out. The objection is sustained.

Q Have you been sentenced on your charges in the state court?

A No, I haven't.

Q Do you have any understanding with the U.S. Attorney's office about the consideration that is going to be given to you for your testimony?

A Only that if I testify the U.S. Attorney's office will send a letter to the sentencing judge.

Q Telling him what?

A Telling him that I had testified.

Q Did anybody tell you that you wouldn't go to jail?

A No.

Q Were you paid any money to testify?

A No.

Q You received some witness fees, didn't you?

A Witness fees.

Q How much were they?

A $60.

MR. LAVIN: I have no further questions.

THE COURT: Mr. LaRossa, any questions?

MR. LaROSSA: May I write you a quick note?

THE COURT: Yes.

Court's Exhibit 26.

(Court's Exhibit 26 marked.)

THE COURT: Mr. Mitchell, would you like to examine it?

MR. MITCHELL: I will join in it.

THE COURT: I'll tell you what it says. It says, "Will you allow Mr. Mitchell to go first?"

Do you want to ask any questions?

MR. MITCHELL: I say I will join in that and go first.

THE COURT: I am glad somebody is in agreement.

Go ahead.

MRS. ROSNER: Your Honor, in view of the hour --

THE COURT: Wait a minute. There is another note here.

Court's Exhibit 27.

(Court's Exhibit 27 marked.)

THE COURT: Mr. Lavin, look at this Court's Exhibit 27.

MR. LAVIN: May I ask one question of the witness, your Honor?

THE COURT: Yes.

MR. LAVIN: You testified that you tested one of the packages that you bought from -- that you received from whom?

THE WITNESS: From Barney Barrett.

MR. LAVIN: What was that substance?

MR. DUKE: Objection.

THE COURT: Have you ever tested materials before to determine their content?

THE WITNESS: To determine their content?

THE COURT: Yes.

THE WITNESS: No, but to determine whether or not they were drugs, yes.

THE COURT: That's what I'm talking about. Content.

What it is made of.

THE WITNESS: Yes.

THE COURT: What is your experience in testing for drugs?

THE WITNESS: On a technical basis I wouldn't say that I was qualified. However, there was a time when I was addicted to narcotics, heroin especially, and when I was unable to have someone test it any other way for me, I would shoot it myself.

THE COURT: And as a result of your experiences, did you come to learn anything about materials that you used?

THE WITNESS: As to what they were? If you mean whether or not I can differentiate heroin from cocaine by shooting it, yes.

THE COURT: Can you differentiate heroin from corn flakes?

THE WITNESS: Shooting it, sure.

THE COURT: Can you tell heroin when you see it or feel it?

THE WITNESS: When you see it or feel it, not always, no.

THE COURT: How could you tell something was drugs? I am trying to find out if you know anything about this or you don't know something about it.

THE WITNESS: You want to know how did I find out it was drugs?

THE COURT: Yes.

THE WITNESS: I cut it, cooked it up, and shot it.

THE COURT: How does that tell you whether it is drugs or not?

THE WITNESS: You been shooting narcotics long enough, there's a sensation that you feel when you are shooting heroin that's different from shooting any other narcotics.

THE COURT: And you have had experience in shooting heroin?

THE WITNESS: I have.

THE COURT: This package that you received, did you do anything with any sample of it or anything contained in it? You said you tested something.

THE WITNESS: That's what I meant when I said I tested it. That I shot it myself.

THE COURT: What did you do? Just explain it to me in your own words.

THE WITNESS: It was supposed to be able to stand a five, which means that it could have been cut five times and remain, you know, sellable in the street. So I cut it four times with three parts manite and one part quinine and shot some.

THE COURT: What do you mean, you "shot"? What do you do when you shoot?

THE WITNESS: I injected it into my veins, intravenously.

THE COURT: What happened?

THE WITNESS: I got high.

THE COURT: What did you learn from that experience as to what the substance was?

THE WITNESS: I learned that it could stand a four. It could stand what it's supposed to stand. Therefore it was what it was supposed to be.

THE COURT: What was it supposed to be?

THE WITNESS: Heroin.

THE COURT: Any other questions?

MR. LAVIN: None, your Honor.

THE COURT: Just tell me again, who did you say you got this material from?

THE WITNESS: From Barney.

THE COURT: From Barney? All right.

Are there any outstanding notes?

MR. LAVIN: This one.

MRS. ROSNER: I have a note, sir.

THE COURT: I know about yours. You want a recess?

MRS. ROSNER: Yes.

THE COURT: Let's finish this and we'll do that.

MRS. ROSNER: Thank you, Judge.

THE COURT: All right. Court's Exhibit 28. The motion therein is denied. We will take a short recess before the cross-examination starts. The jury may go out.

(Court's Exhibit 28 marked.)

(Recess.)

(In the robing room; all counsel present.)

THE COURT: With respect to this witness, Reginald Williams, one of the statements, and I don't know whether it is with tongue in cheek or otherwise, but I accept it as a meaningful and purposeful request, by Mr. Duke, is that after having read the grand jury testimony which he received in advance of the witness' appearance on the stand, and which he describes as "truncated," he makes this statement:

"Extensive investigation is required to prepare for adequate cross-examination of the witness."

I really am at a loss to understand how that could be supported. The testimony on direct examination certainly was neither crucial to the prosecution nor to the defendant and is basically cumulative of a great deal that has already gone into the record heretofore.

On the other hand, to avoid any motions in the record, that time is needed for Mr. Duke to gather up his

cross-examination, I have no objection, if counsel so request, to having this man come back next week, and grant a continuance accordingly of his cross-examination.

Is that what the defendants want?

How about you, Mr. Mitchell, who is going to go first?

MR. MITCHELL: I would make that request, but --

THE COURT: That is enough.

MR. MITCHELL: But, your Honor, I want to be fair to the Court. Part of my examination would necessarily have to be certain records. And at 4:20 on a Friday afternoon during the Christmas-New Years thing, I don't think I would be able to get to the nearest thing to a record before Monday.

THE COURT: What kind of a record are you talking about?

MR. MITCHELL: I am talking about the date he was arrested, how long he stayed in jail, when he was released, when he was paroled. That is all important, because it overlaps on a period of time that he is talking about.

THE COURT: In other words, you'd need Monday for that purpose?

MR. MITCHELL: That's right.

THE COURT: How about you, Mr. Peluso, in inverse order?

MR. PELUSO: Judge, at this time I don't think I am going to examine this witness.

THE COURT: All right, that is two.

Then there is Mrs. Rosner.

MRS. ROSNER: Nor I, Judge.

THE COURT: You will not examine.

Mr. Duke wants time.

MR. DUKE: Your Honor, I don't want to mislead the Court. I am not saying that I will examine him when my time comes. I am saying that if I am going to examine him, I have to have time, because I don't know anything about the man. What I would suggest is --

THE COURT: Yes? What?

MR. DUKE: Is that Mr. Mitchell be permitted to examine him today, and have cross-examination.

THE COURT: He says he wants to investigate on Monday.

MR. DUKE: He may get a little head start on his investigation.

THE COURT: I don't think we need to do that and force him to do anything he doesn't want. It is his option. But speak for yourself. You are the one who talks about "extensive investigation is required," and frankly --

MR. DUKE: Yes, sir, I stand by that.

THE COURT: Frankly I am at a loss to understand how that could possibly be so from a trial lawyer's viewpoint, but let's assume that you need time to investigate. How much time do you want?

MR. DUKE: Your Honor's suggestion -- what was your Honor's suggestion, several days?

THE COURT: I said we'll let him go over to next week.

MR. DUKE: I would think at least Wednesday.

THE COURT: How about you, Mr. LaRossa?

MR. LaROSSA: I quite frankly do not anticipate cross-examining this witness.

THE COURT: Except if you hear something come out. Is that what you mean?

MR. LaROSSA: That's right, sir.

THE COURT: That's fair.

All right, then. What I will do is, since Wednesday seems to be the outermost limit of the request, why don't we do this, and to give everybody the fullest of the opportunity, is he here under a writ?

MR. LAVIN: Yes.

THE COURT: Can you have him back here at ten o'clock Wednesday?

MR. LAVIN: Yes.

THE COURT: Will that satisfy everybody, give you all the time needed?

MR. LaROSSA: Yes, sir.

THE COURT: Mr. Duke?

MR. DUKE: I think so, yes.

THE COURT: All right. Have him back here ten o'clock Wednesday, and in the meantime, if you have any data that will help Mr. Mitchell, furnish it to him, about the fellow's background of when he was arrested and the other things that he may ask you about.

MR. LAVIN: All I have on this is his rap sheet which you have.

MR. MITCHELL: I know that. I have that.

THE COURT: We'll try to be helpful to you so you can enjoy Tuesday if you get down there.

MRS. ROSNER: How much of Monday are we going to enjoy?

THE COURT: You are not going to get me into a conversation about that at this moment. I can see you want to work hard.

All right. Go on. How much more testimony have you got? Are we going to run for the balance of the afternoon?

MR. LAVIN: Yes.

THE COURT: The reporters want to know what time they can go home.

(Discussion off the record.)

(In open court; jury present.)

THE COURT: Now, ladies and gentlemen, I have some good new for you.

We have, with the cooperation of counsel, been able to consider a significant shortening of the trial, so much so that we are in a position to excuse you this afternoon at this time. And despite the fact that I know each and every one of you want to come in on Monday, all the lawyers say that we should declare a holiday because the case will probably end next week, so I am very happy to say to you that we will not work on Monday.

But that means that when you come in on Wednesday, and I am not pointing any fingers at anybody, I expect everybody here at ten o'clock sharp so that we can finish our work in the case hopefully Wednesday or early on Thursday, and then you will hear the closing speeches of the lawyers and the case will take its normal progression from then on.

Let me talk to you about something that I did talk to you about before the case started.

You know, when delays occur, people fall on steps and get into automobile accidents, or other things happen, so

a judge is very reluctant to let gaps occur in the course of a case.

Similarly, and I hope it hasn't, nothing has reached your attention up to the present, and that nothing will reach your attention of anybody other than the witness on the stand having anything to say about this case which might in any way cause you to overlook what you are to address yourselves to and find yourselves contaminated.

So that was the reason why initially I asked you to be very careful to avoid any television or radio or magazine or newspaper references in any way to this case or any other case where you might try by transference of thought to wonder whether it fits or doesn't fit this case.

We are not interested in anybody else's opinions or anybody else's cases, except those that you hear from the witness stand, and I want you to be very careful, and I instruct you to avoid any television, radio, magazine, or newspaper reference in any way to any aspect of this case or any kind of a related situation, whether referring to any person who has been referred to in the course of this case, or is on trial here. It doesn't make any difference.

Your are duty bound not to look at or listen to any of that type of material, or put yourselves in the posture where you have to exercise an effort to exclude any

contaminating influence.

I repeat this because we are going to go over now until Wednesday. This is only Friday, and there is a lot of time in between, and who knows what may occur. I hope nothing occurs, but who can tell.

You are honor bound and duty bound to accord a fair trial here, free of any contaminating outside influences whatsoever, and should anyone or anybody attempt to break into your impartiality, inadvertently or advertently, you are obligated to notify the court clerk at once, who will notify me so that I can take any corrective or other measures that might be required.

I hope that this statement won't cause you to have any misgivings about anything. It is only said to you as a sort of advance so that you will be on your guard not to discuss the case among yourselves, not to discuss it with anybody at home, or elsewhere. Keep your own counsel until the case is given to you for decision. When it is all over, whatever you have in mind to say will be at that time possibly something you may want to relate, but not until it is over.

Stay away from everything. Keep everybody away from you.

In conclusion, I wish you all a very, very good year, and take it easy Monday night.

Good night.

(4:00 p.m., the jury left the courtroom.)

THE COURT: The court will stand in recess until Wednesday, January 2, 1974 at 10:00 a.m. in this room.

MRS. ROSNER: Your Honor, do we have any report from the agents on the subpoena that was served or should have been served on the juror who didn't show up last week?

THE COURT: I have heard nothing about it. I didn't mean to let it go by, and I will conduct a hearing as soon as process can be delivered to that man.

MRS. ROSNER: Thank you, Judge.

MR. LAVIN: Just one matter we might have. Mrs. Rosner has given me a stipulation about the testimony of Dr. Bellamy, the coroner who performed the autopsy on the individual, that if he was called he would testify as to the facts in his report, as to times and places. Well, I don't think that's proper. I don't see any reason why any such testimony should be stipulated to or testified to at this point.

THE COURT: I will bear that in mind and give you my review of it on Wednesday at ten o'clock in the morning.

MRS. ROSNER: Thank you, Judge. Have a good weekend.

(Adjourned to Wednesday, January 2, 1974, at 10:00 a.m.)

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WITNESS INDEX

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UNITED STATES OF AMERICA
v
BENJAMIN MALLAH, et al.

73 Cr 881

New York, January 2, 1974
10:00 a.m.

(Trial resumed.)

(In the robing room.)

MR. LAVIN: Good morning, your Honor. This is regarding the transcript that Mr. LaRossa had, and the copy of the death certificate. On Friday we obtained copies of the marshal's logs from Washington, D.C. and in the logs they keep on prisoners in custody, and I have two of the marshals right here, and those logs indicate that Mr. Conforti never left his hotel room on the 28th, and for that and other reasons, we believe that that date on the transcript is wrong, and that obviates the relevance, if any, of that date of the death of Jack Spada since we don't believe the telephone call was made on the 28th.

MR. LaROSSA: I think it is going to become more relevant before the trial is closed, your Honor.

THE COURT: Well, I don't know how the whole subject got into the record. I am not sure it is at all relevant, but I will wait for developments.

We had a witness who is, I think, in custody or

something.

MR. LAVIN: Yes, your Honor, he hasn't been brought over.

THE COURT: He hasn't been brought over yet?

MR. LAVIN: I have an agent waiting for him downstairs. As soon as he gets here he is going to bring him right upstairs.

THE COURT: The other thing is this: The new law went into effect on May 1, 1971. In the previous case, there was a stipulation I think by the Government that it would not claim that the conspiracy -- that some overt act occurred before May 1, 1971, and it makes a difference as to how I charge, because either I have to charge the old law and the new law or just the new law. So you think through what your position is in connection with the date in this case.

My recollection is that none of the overt acts charged predate May 1. Is that right as a matter of memory?

MR. LAVIN: I believe so. I have to check. I believe that is the case.

THE COURT: What else? I'm not sure I have any other thoughts that occurred to me over the weekend. Anybody else got any?

MR. DUKE: I have two matters, your Honor. I had expected the Government to call Louis D'Ambrosio, whom they

called at the last trial, and --

THE COURT: Who is he?

MR. DUKE: He was a narcotics detective who conducted surveillances during 1971.

I am informed by Mr. Lavin that he is now a policeman and lives somewhere in Long Island.

MR. LAVIN: No, he is not a policeman.

MR. DUKE: In any event, I would like -- Mr. Lavin is unwilling to provide me with his address, and I need it because I think I want to subpoena him as a defense witness.

THE COURT: Wasn't his address stated on the record?

MR. DUKE: No.

THE COURT: In the Sperling case?

MR. DUKE: No.

MR. LAVIN: Mr. Duke, I tell you I haven't spoken to Mr. D'Ambrosio since the last trial, and even then I didn't know his address. I said I am sure someone downstairs has it. He is not in our control.

THE COURT: You are not required to bring him. The only question is can you, by --

MR. LAVIN: I can supply it.

THE COURT: -- by making some inquiries, can you see what you can find out?

MR. LAVIN: I can supply it.

MR. DUKE: The other thing, your Honor, is that on Thursday or Friday at the lunch hour, Juror No. 6 was out in the hallway and the two defendants Barney Barrett and my client were brought out in handcuffs. I saw it. The clerk saw it, and it seems that the lunch hour is a particularly bad time, because the jurors apparently roam around in the hallway, and I am wondering if the marshals can't receive some instructions to make a special effort to keep the jurors and the defendants separated during the lunch hour.

THE COURT: We can accomplish that very simply by keeping the defendants segregated somewhere.

MR. LaROSSA: There is a very easy way, if I may make a suggestion. They walk out into the major hall and then through the back here. If they just came through the courtroom and into the back as the witness comes in, they'd never be seen by the jurors.

THE COURT: No objection to that. Let the marshal know to bring them through the robing room here. That should take care of that.

Anything else?

MR. LaROSSA: When we reach the defendants' case will your Honor have any objection if we go from one witness to the other, from one defendant to the other so that we can

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continue orderly so that one witness after the other can be placed on the stand?

THE COURT: What other method would there be?

MR. LaROSSA: One defendant completing his case and then the second defendant starting his.

I am suggesting it only so we get an orderly and constant flow.

THE COURT: Does that mean that the same person will be recalled for another defendant?

MR. LaROSSA: No, sir. Just talking about other witnesses come out of turn. In other words, if one defendant put on a witness, and then his second witness was not available immediately after that witness took the stand, another witness going on, attributable to a different defendant, so that there is a constant flow of witnesses, not that there would be a re-call of any witness or anything else.

THE COURT: You can do that in any way you want. I have no problem with that. Now, as I said, I am troubled by this whole business of this Kaplan story having been allowed into this record at all. I think it had no place. The Government didn't make any objection, so I didn't make any ruling until we got down to the tapes. And if there is going to be any fanfare about that, I'd like to know about it in the robing room so that I can make whatever rulings I

want to make. I have a very clear notion, having reread the record, that the whole subject matter is one involving extrinsic evidence on a collateral matter that does not relate to the motive or intent of the witness in respect to the defendants on trial.

MR. LaROSSA: I will be very happy to tell you what I plan on doing right now, if your Honor chooses.

THE COURT: All right.

MR. LaROSSA: A witness will take the stand to identify the date being October 28 and the time that the phone call occurred. I then plan not to do this in front of the jury but to do two things by virtue of writing you a note. One was reoffering the tape on the defendant's case, and the second was offering a stipulated set of facts on the autopsy report.

THE COURT: You are certainly not going to offer in evidence the fact that the man had five bullets in his head?

MR. LaROSSA: I am talking about the time of the death.

THE COURT: The time of the death?

MR. LaROSSA: Yes, sir. It is specifically aimed at the one portion of the testimony in which Mr. Conforti states that he spoke to Mr. Spada a week after the phone call.

THE COURT: I think I am going to take all of that in the robing room, and make my rulings accordingly, so that your record is protected.

MR. LaROSSA: Does your Honor wish me to send up a note when it gets to that point?

THE COURT: Well, what I am going to suggest that you do is, if you want to, you can have the witness testify in here, that is,you can ask the question, and I will rule on it. I will tell you now that I have very serious doubt that I will permit any more of this Kaplan story into the record. The case does not involve Kaplan.

MR. LaROSSA: It involves Mr. Spada, though, may it please the Court. He is a co-conspirator in this case, and he has been -- the record --

THE COURT: But you introduced it, you see. You can't take advantage of your introducing it.

MR. LaROSSA: No, sir, I didn't introduce Jack Spada. Jack Spada was named as a co-conspirator and on the direct case, in the Government's testimony, it was introduced that Mr. Spada and Mr. Conforti cut heroin together at the direction of Mr. Sperling, and those acts were offered in furtherance of the conspiracy.

I submit to you most respectfully that any conversations that Conforti had with Spada, conspiracy or not,

would be introduced -- would be admissible on that basis.

Another factor that I ask your Honor to give some note to is the fact that the Government chose the indictment dates by virtue of beginning on or about and ending on or about a specific date, but those dates are certainly -- must be consistent with the proof. And I think that any relationship between Spada and Conforti, both named as co-conspirators, we have the absolute right to explore.

I also submit that this is not collateral to the issue since all the points that I advanced previously as far as the defendant Mallah is concerned, it is directly relevant to this trial. But on the Spada phone call, I submit to you that that has nothing to do with Kaplan. The fact that he spoke to Spada a week after this, I think, has a direct bearing.

MRS. ROSNER: May I offer a thought, your Honor? We had some question when this material was originally offered as to how it related to this conspiracy. It is my recollection that during the testimony of Conforti he indicated that the heroin delivery which was discussed with Kaplan, which Conforti claims to have made at Kaplan's bedside in a hospital, was heroin which he attributes to Herbert Sperling.

It seems to me that through the witness' testimony

it has been revealed that the transactions which he discussed with Kaplan by phone were transactions in the course of and in furtherance of this conspiracy by definition, because it was part of his relationship as a narcotics deliverer of Sperling's, and I would suggest, your Honor, that this really is a matter within the ambit of the conspiracy.

I would make this second point, Judge. We now have a situation where we have a disputed issue of fact as to whether or not the taped conversation was made on October 28, and of course that is a matter susceptible of proof on both sides, but we have a further item of evidence in the record that a conversation with Spada took place at a date after that date, which is impossible of being true. I think we have a situation where there probably is perjury in the record, and I think --

THE COURT: I think there is more than that in the record.

MRS. ROSNER: I think not to be able to prove that, your Honor, would be serious error.

THE COURT: I think that the error was created by the defendants.

I have all of that in mind and the record is very clear in my mind, and also his responses and how the witness came to acknowledge the date October 28 and what

acknowledgement, in fact, he did make. There is a very serious question on this record whether he ever did acknowledge the date October 28, and there is a very serious question of the propriety of somebody having put the date October 28 on Exhibit Q-1 when that date does not appear on the tape itself.

MRS. ROSNER: May I just respond briefly, your Honor? I don't think we need to rely on the witness' adoption of that date for the point to be made. Regardless of how the matter came into the record, we now have a situation where it has been permitted, and where there is a very great likelihood that the witness has perjured himself. We are entitled to establish, most respectfully, the October 28 date independently of the witness' adoption, and to demonstrate his perjury, regardless of how the evidence came in. It is in, Judge, and if this witness has perjured himself on the record, this jury is entitled to know it. You can't in effect strike the matter that is already in, because he's committed perjury.

THE COURT: I don't think that that is the law.

MR. LAVIN: I was just going to add that, first of all, it is a completely collateral matter as to whether or not he called a week and a half later, and you are going to prove that he didn't and it is perjury. Completely collateral.

Secondly, there is serious doubt whether that date is the 28th, and the records indicate it is not, and we are going to have to get into all issues of bringing people on, saying it is the 28th, somebody will say it is not the 28th, the 27th.

MR. LaROSSA: Are there reports about the 28th in existence? If there are, I make demand for them, about Mr. Conforti's whereabouts, and any written reports indicating what and where he was on the 28th of October.

THE COURT: No, that is all very interesting, but you just can't bootstrap yourself into that position, Mr. LaRossa.

I think that what you had better do is to make a record of your proposed proof of this proposed witness. Bring him in here, we will swear him, you can ask him the question, and we will put it on the -- put the testimony on the record out of the hearing of the jury, and then I will let you have it. I think that what is going on here now is prejudicial to the fair and impartial trial of this case, that is, what is proposed to do is prejudicial to the fair and impartial trial of this case. If I am confirmed in that view as a result of your proposed offer and Mr. Lavin's proposed offer, I am going to rule the whole business out and leave it to the higher court.

MR. LaROSSA: Note my objection to the Court's ruling and the method of presentation of the testimony.

THE COURT: I don't see any choice in the matter other than for you to put a witness on the stand and ask the question and have the question objected to. Do you think there is any value to that?

MR. LaROSSA: Oh, no, sir.

THE COURT: What are you objecting to as far as my procedure is concerned?

MR. LaROSSA: I am objecting to the fact that you are going to hear my testimony with respect to October 28 and Mr. Lavin's and make a decision of fact.

THE COURT: No, no, I am not going to do any such thing. I just want to hear your question. I will rule on the question. In other words, all I am saying to you is that offers of proof have a way of getting distorted semantically when somebody writes a brief. The simplest and most direct way in which to apprise a judge of what is attempted by an offer, and the simplest and most direct way of letting the Court on appeal know what it was that the Court ruled on, is to ask the question in proper form and have the judge rule. I am not asking you for what he is going to say.

MR. LaROSSA: I misunderstood what you said.

THE COURT: No, no. This is consistent with my general rule of this business of offers of proof. You see, I had enough appeals in my lifetime to know what happens to a record when somebody starts writing a brief, and the simplest way is to avoid this nonsensical procedure of semantic offers and then find out that somebody balloons up a word in an offer on an appeal which was far away from anybody's contemplation at the time.

MR. LaROSSA: I have no objection to that procedure.

MRS. ROSNER: Your Honor, by the same token, so that the Government' isn't in a position to argue matters on appeal which we cannot refute, may we have marked for the record whatever documents the Government may have concerning the marshal's records of Conforti's custody so that we might know exactly what it is?

THE COURT: You have no right under Brady against Maryland to that.

MRS. ROSNER: I am not moving under Brady, your Honor.

THE COURT: Nor do I know that you have a basis for 3500 material on this subject because there is no witness.

MRS. ROSNER: I am not moving under either ground, your Honor.

THE COURT: I am not proposing to have a

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declaratory judgment on what the Government may ultimately prove in some other connection at another place.

MRS. ROSNER: No such grounds, your Honor. I think a subpoena can issue for those records. It is a disputed issue of fact and the Government has the records. They have relied on them on the record, Judge, to prove that October 28 is not the date.

MR. LAVIN: I haven't proved anything.

THE COURT: It is a disputed issue of irrelevant fact.

MRS. ROSNER: I think we are entitled to it, Judge. If Mr. LaRossa has to offer his proof on the subject.

THE COURT: He doesn't have to do anything. What do you want to offer?

MRS. ROSNER: I would like through the Court's direction, most respectfully.

THE COURT: I will not make any such direction.

MRS. ROSNER: Then I think a subpoena can rightly issue, Judge, for those records.

THE COURT: You go ahead and subpoena anything you want and I will consider any application in connection with the subpoena that is appropriate. I don't propose to be bullied into a position where I think that the case will be unfairly tried from here on.

MRS. ROSNER: This is all out of the presence of the jury. It is merely for the sake of completing the record.

THE COURT: No, I hesitate to say it, but I question the motivation and intent.

MRS. ROSNER: The motive is so that we don't have matter de hors the record on appeal on the Government's side which we are not apprised of beforehand, which frequently happens.

THE COURT: They are not apprised of what you are up to and you are not apprised as to what they are up to. We'll leave it at that.

MR. MITCHELL: Your Honor, I have a problem that arises from the thing. As a result of the admission of the attempted extortion by either Spada alone or Spada with Conforti or Conforti without Spada -- and it is not clear on the record -- I cross-examined Conforti in an attempt to show that he had a tendency to shake down people. I think whether anybody is satisfied or not, I am satisfied in my own mind that I laid a foundation for argument on summation. I don't want to anticipate anything, but does the fact that Conforti stated that there was going to be an attempt to get money, does that remain in the record?

THE COURT: I am not striking anything from the

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record.

MR. MITCHELL: That is what I wanted to know.

THE COURT: I am not striking anything fron the record, but I don't think that I have to develop peritonitis here.

All right. Now, how do you want to proceed so as to protect your position on this? I suppose what you should do is to wait until the Government closes its case.

MR. LaROSSA: Yes.

THE COURT: All right.

MR. LaROSSA: What I think I should do is write out a series of three or four questions for your Honor to rule on.

THE COURT: That may be a simple way of doing it. State the name of the proposed person and the questions that you propose to ask him, and get them in good form so that there is no formal objection. Maybe that's the way to do it, to handle it, but at all events, you won't be doing that until the Government has rested.

MR. LaROSSA: That is correct.

THE COURT: All right.

MR. LAVIN: Your Honor, there is one other matter. We are going to attempt to prove that Mr. Mallah flew after he found out about the indictment. In order to do that, we

going to offer true copies of the old indictment in 73 Cr 330, true copy of the docket sheet, and a true copy of the bench warrant that was issued for his arrest, and the bench warrant on which he was arrested. I just want to apprise --

MR. LaROSSA: I am going to object to that.

THE COURT: You are objecting to the evidence of flight?

MR. LaROSSA: There is no evidence of flight.

THE COURT: But I say the attempt to interpose these things on -- of course, he will have to carry it out further.

MR. LaROSSA: I think the damage that can be done if they can't prove flight is going to be irreparable.

THE COURT: Then you should prove it in inverse order. You should prove the fact first and then lay the foundation for it later, so don't object to the foundation before you establish anything else. If he can establish something else, then he can go backwards and put in the mechanical matters.

MR. LaROSSA: I agree.

THE COURT: All right.

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen. Thank you all for being on time this morning. We had some

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legal matters that started well before ten, and lasted until now, and that was the reason you have been delayed, but it is all in the interest of trying to conserve your time.

All right, Mr. Mitchell, please.

REGINALD WILLIAMS, previously sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Mr. Williams, when did you first meet Herbert Sperling?

A I believe it was in June or July of '69.

Q Who introduced you to Herbert Sperling?

A Another inmate in the jail that we were at.

Q You were in jail with Mr. Sperling?

A I was.

Q What jail?

A Branch Queens House of Detention, Long Island City.

Q When had you gone to the Queens House of Detention?

A In April of 1969.

Q Was it shortly thereafter that you met Mr. Sperling?

A Yes, it was.

Q How long was Mr. Sperling in jail with you in 1969?

A After I met him?

Q Yes.

A I met him in June or July, and I left there in May of the following year.

Q How long was Mr. Sperling there?

A I have no idea. He was there all of that time and before I met him.

Q What?

A He was there all of that time, and before I met him.

Q In other words, when you arrived in April of 1969, Mr. Sperling was in jail?

A I believe so, yes.

Q What tier were you on in Queens --

MR. LAVIN: Objection.

THE COURT: You may answer.

A When I first arrived?

Q Yes.

A The fourth tier.

Q And what tier were you moved to?

A Eventually I was on all the tiers, but when I met Mr. Sperling I was on the first tier.

Q On the first?

A Right.

Q When did you get to the first tier?

MR. LAVIN: Objection.

THE COURT: I will allow this one further question.

A I think June of '69.

Q What name were you using in April of '69?

A Carmel Williams.

Q Was that the time you were charged with burglary in the third degree?

A It was.

Q You had never met Mr. Sperling before that time; is that right?

A No, I didn't.

Q And in April of May of '69, what did Mr. Sperling tell you?

A Nothing. I think I met him in June or July of '69.

Q What did he tell you?

A At that time?

Q Yes.

A I don't understand what you mean. Tell me in regards to what?

Q Well, about meeting him a couple of years in the future.

A At that time, nothing.

Q When did he tell you something about meeting him in the future?

A After we got to know each other better.

Q When?

A Exactly when?

Q Yes.

A I'll have to say maybe October or November.

Q Of 1969?

A That's when we started talking more.

Q October or November of 1969?

A Right.

Q Did Mr. Sperling tell you where he lived?

A No, he didn't.

Q You were sentenced to four years; is that right?

A I was.

Q In July of '73 were you arrested?

A I was.

Q Did you make bail?

A No, I didn't.

Q You were arrested for robbery in the first degree with a loaded gun; is that right?

A I was.

Q How many other people were in the holdup?

A One other.

Q When did you plead guilty?

A In October.

Q Of 1973?

A Yes.

Q And at that time, what did you plead guilty to?

A Robbery in the second degree.

Q Was it before your plea or after your plea that you got in touch with the federal authorities?

A It was before my plea.

Q When?

A Initially in July, I believe.

Q How did you contact them, by letter or did you have your attorney contact them?

A I made a phone call.

Q Who did you call?

A I called this court building. I don't know who I spoke to, but I asked who was -- which U.S. Attorneys were handling the case of Sperling against the United States.

Q That was a case over by then, was it?

A I had no idea. I don't know.

Q Hadn't you read about it?

A Had I read about it?

Q Yes.

A Sure,I had read about it.

Q Is that why you called, because you read about it?

A No.

Q Up to that point, had you been offered anything other than a Class A felony?

A I had never been offered a Class A felony. I was indicted on a Class B felony and up to that point I wasn't offered anything.

Then again let me correct myself. I was offered something.

Q What were you offered?

A A Class C felony with a stipulation of ten years.

Q It was after you were offered the ten-year stipulation that you contacted the federal authorities?

A Yes.

Q Had you ever informed on anybody before that?

A No, I hadn't.

Q Was your purpose in contacting the federal authorities to see if you could get some sort of a break on your state case?

A No, it wasn't.

Q Did you have a grudge against somebody?

A No, I didn't.

Q After all these years you suddenly wanted to clear your conscience; is that right?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained.

Q After all these years, you decided you wanted to make amends?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained.

Q Did you decide that you wanted to cooperate without any motive whatsoever, just an idea of cooperating?

A My initial intentions when contacting the U.S. Attorney's office was not to cooperate. Those weren't my intentions when I first called.

Q Why did you call?

A When the indictments were first passed, at least made public, in April, I was under the impression, because I had been associated with Herbie during the period of time that I was in the street, that I may have been indicted also; when they were announced, all the names weren't included, so when I was arrested on the state charge, you know, the state charge in itself was more or less concrete as far as the prosecution was concerned. As far as I could see there was no way that I could win.

In the event that I was to lose on this charge I didn't want a federal indictment to come down afterwards which may have, you know, had me wound up serving two consecutive terms, so I called to find out. My initial purpose for calling was to find out if I was named in the indictment.

Q What did you find out?

A What I found out was the name of the attorneys who were handling the case.

Q All right. Did you speak to them?

A At that time, no.

Q Who was it that was handling the case? What names did you find out?

A Lavin, Velie and Gross, I believe.

Q And did you speak to any of them on the phone?

A No, they had me writted over a few days later.

Q Whom did you speak to?

A Mr. Gross.

Q When was that?

A I think July of '73.

Q Did you find out whether you were indicted?

A Yes.

Q What did you find out?

A That I was not.

Q Did you find out whether they were going to indict you?

A No, I didn't.

Q Did you ask?

A No.

Q Then you at that time had obtained the information that you wanted; is that right?

A As to whether or not I was indicted, yes.

Q At that time, did Mr. Gross make any suggestion to you about cooperating and what the Government would do in return?

A He did.

Q What did Mr. Gross tell you?

A He asked me a few questions and asked me would I be willing to cooperate with the Government, and I told him that I wouldn't.

Q That was the end of that conversation?

A More or less in essence that's all it was.

Q And then you were returned to the Tombs?

A Right.

Q Did you make the next call to see the U.S. Attorneys or did they bring you over again?

A I made the next call.

Q When was that?

A I believe it must have been in August.

Q Of 1973?

A Right.

Q Did they bring you over again?

A They did.

Q Who did you speak to this time?

A Mr. Lavin.

Q Did you tell Mr. Lavin that you wanted to cooperate?

A At that time, no.

Q What was the purpose of this call?

A When I first came over at this time, those were my intentions, When I asked, you know, how I could benefit by that, what he told me wasn't, you know, agreeable to what I wanted, so I told him no.

Q In other words, you wanted something in return for your cooperation; is that right?

A Right.

Q What did you want in return foryour cooperation?

A I wanted the charges in the state court dismissed.

Q What about the federal charges?

A I had no federal charges.

Q But weren't you possibly the subject of an indictment?

A At that time, I found out that I had no federal charges and there would be none.

Q I know you had no federal charges at that time, but did you understand that if you admitted buying narcotics from Herbert Sperling and reselling them, that the federal government could indict you?

A Would you say that again?

MR. MITCHELL: Read it back, please.

(Question read.)

A I was told by the U.S. Attorney that anything I said in that office would not be used against me. In essence, I wouldn't be indicted.

Q In other words, if you spoke they wouldn't indict you?

A Right.

Q Did you cooperate at that point?

A No, because that's when they told me that they couldn't -- it wasn't within their jurisdiction to get the case dismissed in the state court.

Q But you had now achieved something, right, that if you talked, you wouldn't be prosecuted by the federal government; is that correct?

A I was told that I wouldn't be prosecuted by the federal government anyway.

Q No matter what you told them?

MR. LAVIN: Objection to the form of the question.

THE COURT: I think that is too broad, Mr. Mitchell.

Q Did you inquire whether if you admitted your participation in the narcotics transactions with Sperling, you might be indicted?

THE COURT: He has already testified --

MR. MITCHELL: This is foundation.

THE COURT: -- that anything he said in the office would not be used against him.

Q When did you next get in touch with the federal authorities?

A Maybe a week or so later.

Q When was that, time-wise?

A I believe it was in August.

Q What?

A To the best that I can remember, it was in August.

Q Were you brought over again on a writ?

A I was.

Q Who spoke to you this time?

A Mr. Lavin.

Q Was there an agent with him?

A There was.

Q What?

A There was.

Q Do you remember the agent's name?

A Yes, I remember his name.

Q What was his name?

A Stu Stromfeld.

Q At this time did you give them information or did you work out a deal with them?

MR. LAVIN: Objection to the form of the question.

MR. MITCHELL: I will withdraw it.

Q At this time did you give them any information?

A I guess you could say that, yes.

Q And in return for that information, what were they going to do for you?

A In return for that information, nothing.

Q Nothing at all?

A Nothing at all.

Q At any time after that did they say they would do something for you in return for your cooperation?

A They said that the only way they could use the information or do anything for me in regards to my sentencing in state court was if I agreed to testify before the grand jury and at the trial.

Q And in return for testifying before the grand jury and at the trial, what were they going to do for you?

A They said that they would notify the judge in my case who would sentence me of my cooperation with the government and that I had testified before a grand jury and at the trial.

Q And after they made you that offer you agreed to testify before the grand jury?

A Before they made me that offer.

Q Did they have a discussion with you as to what you

were going to testify to?

A A discussion as to what I would testify to?

Q Yes. In other words, did you tell them what help you could give them?

A Oh, they asked me questions.

MR. LAVIN: Objection to the form of the question.

Q Did they ask you what you knew about specific named individuals? Just yes or no.

A Yes.

Q Did they show you pictures?

A Yes.

Q Did they take any statement from you?

A No, not that I know of.

Q Nobody wrote anything down? Mr. Lavin or the agent?

A Mr. Lavin.

Q Mr. Lavin wrote?

A Sure, he did.

Q That was sometime in August of 1973; is that right?

A It was.

Q How long after that did you see Mr. Lavin again?

A The next time he called me to his office, which may have been in August or September.

Q Don't you remember? It was only a few months ago.

A Well, I have been in his office in August.

Q What day in August?

A What day in August?

Q Yes.

A You'd have to ask him.

Q What?

A You'd have to ask the U.S. Attorney. I don't know.

Q Wasn't it an important date when you found out that the government was going to send a letter to the sentencing judge in the state court?

MR. LAVIN: Objection.

THE COURT: I think it is argumentative. Sustained.

Q When was the last time that you were in Mr. Lavin's office before you testified before the grand jury?

A The date?

Q Yes.

A The last time I was in his office before I testified before the grand jury was the day that I testified before the grand jury.

Q All right. The date before that?

A The day before that, I don't remember.

Q When did you testify before the grand jury, what date?

A What date? I don't remember the date.

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Q Tell me, in the period from January 1, 1973 to July 10, 1973, when you were arrested, had you been using drugs?

A I had.

Q What were you using?

A Heroin, cocaine.

Q How long had you been using the heroin and cocaine to the time when you were arrested in July of '73?

A Off and on for a period of four years.

Q In other words, from the time you got out of prison for the burglary, you started to use it?

A Before.

Q Before. Right after you got out on the burglary you continued to use it?

A No.

Q When did you start to use it again after the burglary, after release on the burglary?

A Maybe a few times in the spring of '73, and maybe started from May to July of '73.

Q What?

A A few times in the spring of '72 and maybe from May to July of -- '72 in the spring, and May to July of '73.

Q How about the fall and winter of '72 into '73? Did you use drugs?

A The fall and winter?

Q Yes.

A No.

Q Did you use it in May of '72?

A May of '72?

Q You were using drugs, weren't you?

A I was.

Q What?

A I was.

Q You were arrested for possession of drugs, weren't you, in May of '72?

A In May of '72?

Q Yes.

A Yes, I was.

Q Were you using it at that time?

A Off and on I was.

Q Were you using it in July of '72 when you were arrested for burglary?

A July of '72?

Q Yes.

A No.

Q You weren't using it then?

A No.

Q Tell me, were you sentenced in May of 1963 to an

indefinite term at Rikers Island?

A I was.

Q Was that for a larceny?

A It was.

Q In January of 1964 were you returned for violation of your parole?

A I was.

Q In December of that same year, were you arrested under the name of Leonard Kendricks?

A December of '64?

Q Yes.

A I was.

Q And were you returned to Rikers Island for parole violation again?

A I was.

Q Were you arrested in June of '66 for felonious assault on a correction officer?

A I was.

Q Were you arrested in December of '66 for grand larceny and sent to the correction center in Rikers Island?

A I was.

Q Were you arrested under the name of Leon Johnson in August of 1967 for unlawful intrusion and burglary tools?

A I was.

Q In October of '67 were you arrested for burglary under your right name?

A October of '67?

Q Yes.

A I was.

Q In July of '68, were you arrested for grand larceny of an automobile?

A I was.

Q Were you also charged with criminal possession of a dangerous drug?

A In July of '68?

Q In August of '68.

A I was.

Q In March of 1969, you had the burglary. When were you released?

A November 29, 1971.

Q Did you obtain a position or go to work when you were released?

A Shortly after that.

Q Was it a position working for Herbie Sperling?

A You mean did I sell narcotics for Herbie Sperling?

Q When you say you went to work, was that for Herbie Sperling or was it some other employment?

A It was some other employment.

Q When did you get the employment?

A About January, I believe.

Q Of what year?

A '70.

Q January of '70?

A Yes, sir.

Q I thought you weren't released until '71.

A You said January of '70?

Q Yes. You said January of '70.

A Then I meant '72. Excuse me.

Q January of '72.

A Right.

Q About ten days after you were released, which was the 29th of November, 1971; is that right?

A Right.

Q Were you arrested for possession of drugs?

A I was.

Q When did you see Herbie Sperling in 1971, if you saw him?

A About five days after I was released, about December 4, I think.

Q And did you have a place to find him?

A I did.

Q Where was the place?

A The Ballantine Barber Shop on 54th Street and Seventh Avenue.

Q Did you find him there?

A Yes.

Q At that time did you tell him that you were just out of jail and that you needed some money?

A I did.

Q Did he give you some money?

A He did.

Q Did you come back again on many occasions to ask for money in the bar?

A I did.

Q Did you get money from Herbie Sperling and from other people who were in the bar?

A Other people who were in the bar? No.

Q Just Herbie?

A Right.

Q Herbie was always giving you a few dollars; is that right?

A Was he always giving me a few dollars? No, he wasn't always giving me a few dollars.

Q But on many occasions?

A Yes.

Q Who in December of 1971 other than Herbie Sperling--

were you introduced by Herbie Sperling to anybody?

A Yes, I was.

Q To whom?

A Louis Mileto.

Q How about Joe Conforti?

A No, I was not.

Q Were you ever introduced to him?

A Not that I can remember.

Q Did you ever see him?

A No. I may have seen him but I didn't know if I did.

Q And then as you told us, you got some drugs from Mileto; is that right?

A That's right.

Q Then we are in 1972, January of 1972. I will withdraw that.

Tell me, on the 9th of December, 1971, when you were arrested for possessing a drug, what drug was it?

A Cocaine.

Q How much was it?

A If my memory serves me, it was 157 grams.

Q Did Mileto give you any other drugs in December?

A No, he didn't.

Q How about January of 1972?

A He didn't.

Q How about February of 1972?

A No.

Q Thereafter did you ever get any drugs from Mileto?

A No, I didn't.

Q The only time you got it was in December of '71?

A Correct.

Q Tell me, were you charged with violating your state parole on the four-year burglary sentence? You were arrested for that?

A The charge of violating my state parole on the four-year burglary sentence?

Q Yes, right.

A When?

Q At any time.

A Yes, I was.

Q When?

A May, I believe, 18th.

Q What year?

A 1972.

Q May of '72?

A Right.

Q And did you go away for the violation?

A For a period of time, I did.

Q How long did you go away for?

A I was held until it was determined whether or not I had actually violated my parole, for six weeks.

Q Six weeks. When was that?

A From May, I believe May 18 of 1972, until about June 29.

Q When you were released did you go around to see Herbie?

A I did.

Q Did you ask him for some money after coming out of prison?

A Among other things, I did.

Q Now, you told us that sometime the end of the year this individual that you know as Barney was supposed to have given you a package; is that right?

A He did.

Q Did you give him any money for it?

A Did I give Barney any money? I didn't.

Q Did you have any conversation with him as to the quantity that was in the package?

A On one occasion, yes.

Q On the occasion that you told us about when you testified here?

A Correct.

Q Did you?

A I did.

Q Did he tell you it contains X amount and it is worth so many dollars?

A He told me it contained X amount.

Q Where was this discussion?

A In the bathroom of the Gold Rail Bar.

Q When did you plead guilty to the robbery?

A In October.

Q You haven't been sentenced yet, have you?

A No, I haven't.

MR. MITCHELL: I have no further questions.

THE COURT: Any other?

MR. LaROSSA: I have no questions.

MRS. ROSNER: No questions.

MR. DUKE: No questions.

MR. PELUSO: No questions.

THE COURT: Any redirect?

MR. LAVIN: No redirect.

THE COURT: Thank you very much. You may step down.

(Witness excused.)

THE COURT: Next witness, Mr. Lavin.

MR. LAVIN: Sergeant DeLuca.

FORTUNATO DE LUCA, called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Sergeant De Luca, what is your present occupation? What is your present assignment?

A I am a sergeant in the New York City Police Department presently assigned to the Organized Crime Control Bureau and the New York Drug Enforcement Task Force.

Q You were in the police force in 1971, were you?

A That's right.

Q What was your assignment at that time?

A I was assigned as an investigator in the narcotics district of Manhattan South.

Q Did you have any specific duties during the months of July and August 1971?

A Yes. I was conducting a surveillance in front of a location on Seventh Avenue, 844 Seventh Avenue.

Q What was that location?

A That was it.

Q What was 844 Seventh Avenue?

A Ballantine Barber Shop, a men's hair stylist.

Q From where were you conducting the surveillance?

A From 55th Street and Seventh Avenue, the Hotel Wellington, on the fourth floor, during 1971.

Q A room in the hotel?

A Yes, from a room.

Q Could you tell us how far away from Ballantine's you were in that hotel room?

A Well, roughly about a half a block, and four floors up.

Q Did you have any equipment with you while you were conducting your surveillance?

A Yes, I had a camera and binoculars.

Q For what period of time, if you recall, did you conduct surveillance in 1971?

MR. LaROSSA: Objection.

THE COURT: Well, during what period of time did you conduct surveillance?

THE WITNESS: During the months of July and August.

THE COURT: Of what year?

THE WITNESS: Of 1971.

MRS. ROSNER: I am sorry, your Honor, I did not hear that answer.

THE COURT: Read it to them.

(Record read.)

Q Can you tell us what is in the immediate vicinity

of Ballantine's Barber Shop, what stores or --

A Yes, well, right -- Ballantine's Barber Shop is located between 54th and 55th. There is a hair stylist right next door, which is Ballantine's. Right next door to that there is a bar and grill, the Gold Rail Bar and Grill. There is a delicatessen a few doors away, Smiler's. On the next block between 53rd and 54th there is a Stage Delicatessen.

Q During the time you were conducting your surveillance in 1971, can you tell us some of the people you observed in the vicinity of Ballantine's, in front of it?

MR. LaROSSA: Objection.

THE COURT: Received subject to connection.

THE WITNESS: Shall I answer that, your Honor?

THE COURT: Yes.

A Yes. Well, there was a man named Herbert Sperling. A man named Norman Goldstein. A man named Benjamin Mallah. A man named Louis Mileto. Peter Salanardi, a man named Leo Guarino. That's all I can recall from '71.

Q Do you know an individual named Vincent Pacelli, Jr.?

A Yes.

Q Do you see Mr. Pacelli in the courtroom?

A Yes.

Q Would you point him out for the Court and jury?

A Yes.

(Mr. Pacelli rises.)

MR. LAVIN: May the record reflect the witness has identified Mr. Pacelli as Mr. Pacelli?

THE COURT: Yes.

Q Do you know an individual named Benjamin Mallah?

A Yes.

Q Do you see Mr. Mallah in the courtroom?

A Yes, I do.

Q Would you point him out for the Court and jury, please?

A Yes, the gentleman seated right at the -- a little back from the table, moustache, polka dot tie and glasses. Balding.

MR. LAVIN: May the record reflect the witness has identified the defendant Benjamin Mallah.

THE COURT: Yes.

Q Do you know a person named Barney Barrett?

A Yes, I do.

Q Do you see Mr. Barrett in the courtroom?

A Yes.

Q Would you point him out for the Court and jury?

A The gentleman seated with the checked jacket, blue shirt.

Q During the occasions when you were on surveillance

did you have occasion to take any photographs?

A Yes, I did.

Q From where were those photographs taken?

A They were taken from the fourth floor of the Hotel Wellington on the corner of 55th and Seventh.

Q What type of camera?

A It was a 35-mm. camera with a 200-meter lens.

Q Is that a special type of lens?

A No, it is just a telephoto lens.

Q During your surveillance in 1971, who took the photographs from the hotel?

A I did.

Q Did you take all the photographs?

A 90 percent of them, yes.

Q I show you what has been marked Government Exhibit 60 for identification. It is a folder. Did you prepare that folder?

A Yes, I did.

Q Did you place those photographs in the folder?

A Yes, I did.

Q Did you indicate alongside the folder the dates that you took those pictures?

A Yes, I did.

Q Did you take those pictures?

A Yes.

Q Do those photographs accurately represent events you have seen on the dates indicated alongside them?

A Yes, this folder does represent that.

Q Did you also go through that folder and make notations as to the identity of individuals?

A Yes, I did.

MR. LAVIN: Your Honor, the Government would offer Government Exhibit 60.

MR. LaROSSA: If Mr. Lavin has more direct, do you think it would make sense to continue with the witness? We won't hold the jury then looking at the pictures and hold it over until we get a chance to look at them.

THE COURT: All right. Go ahead. Have you got anything else on direct?

MR. LAVIN: It is mostly concerned with the pictures, your Honor.

THE COURT: What is that?

MR. LAVIN: It is mostly concerned with the photographs.

THE COURT: Go ahead and ask him all the questions. Offer them all at one time and let them look at all of them at one time.

Q I show you what has been marked Government Exhibit

8 and Government Exhibit 9. Did you take those photographs?

A Yes, I did.

Q Do they accurately represent events that you saw when you took those photographs?

A Yes.

Q Do you recall when you took those photographs?

A During '71, July of '71.

Q What about Government Exhibit 9?

A Yes, the same.

THE COURT: Were those photographs taken from the same location?

THE WITNESS: Yes, your Honor, those are blowups.

THE COURT: In the same manner as previously testified to about the other photographs?

THE WITNESS: Yes, your Honor.

THE COURT: Any other photographs that you are going to present?

MR. LAVIN: Yes, your Honor.

THE COURT: Let's get them all at one time.

MR. LAVIN: I am, your Honor.

Q I direct your attention now to August of 1972. What were your duties at that time?

A I was assigned as a sergeant in the Manhattan South narcotics district.

Q Can you tell us what you were doing, what were your specific duties during that time?

A Yes. One of the assignments that I had during this period of time was a surveillance of the Ballantine Barber Shop.

Q You had discontinued surveillance in August of 1971?

A Yes, that's correct.

Q From where in 1972 in August and following were you conducting the surveillance?

A This is also from the Hotel Wellington, but it was -- now we went to the sixth floor and we used the sixth and fourth floors.

Q How long were you on surveillance at that location?

A From August until November of '72.

Q How often were you on duty during that time, per week?

A We averaged around four days a week.

Q You told us what you could observe from the room in 1971. Could you see the same area from the room you were using in 1972?

A Yes, almost the exact same area.

Q Did you have any equipment with you at that time?

A Yes, we had a camera, 35 mm. camera with a 400-

meter lens, binoculars, and also we used electronic equipment.

Q During the course of that surveillance did you have occasion to take some photographs?

A Yes, I did.

Q What did you do with the photographs after they were taken each day?

A Well, they were taken out, processed at the police department laboratory. I received the prints back and they were entered in folders such as you have.

Q These are not the folders you put them in at that time?

A No, they are not.

Q I show you Government Exhibits 61 through 61-H and Government Exhibits 62 through 71 for identification. Did you prepare these folders?

A Yes, I believe I did.

Q Would you look at them, please?

While you were preparing these photographs, did you put next to the photographs or on the outside of the folder the date on which those pictures were taken?

A Yes, I did.

Q All those pictures were taken in 1972?

A That's correct.

Q Did you also next to the photographs themselves

in the albums put numbers, and next to the numbers persons you identified in the pictures?

A Yes, that's correct.

Q All these pictures accurately represent events you have seen at the time you took them?

A Yes, they do.

Q And 61-A through 61-H, are these blowups from photographs within those albums?

A Yes, they are.

Q You took those photographs?

A Yes, I did.

Q You took those photographs at the dates indicated in the folders?

A That's correct.

Q From which those pictures are blowups?

A That's correct.

Q And these photographs accurately represent events you have seen on the days indicated in the folder?

A Yes, that's correct.

MR. LAVIN: Your Honor, at this time the Government offers Exhibits 8 and 9 for identification, Government Exhibits 61 and 61-A through 61-H, and Government Exhibits 62 through 71 for identification in evidence.

MRS. ROSNER: I will object on the grounds of

relevancy on behalf of my client, your Honor.

MR. LAVIN: Your Honor, I just have a few more questions on the witness, but they are based on the photographs which I would like to show him while I ask the questions.

THE COURT: What is the position of the defendants on the photographs?

MR. LaROSSA: I haven't seen the second group.

THE COURT: Please look at them.

MR. LaROSSA: Would you like us all to look at them together?

THE COURT: Yes.

MR. MITCHELL: Your Honor, on Exhibits 60 through 71 I object on the ground of relevancy.

MR. DUKE: Your Honor, could I ask the witness a few questions on the voir dire concerning those?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. DUKE:

Q Mr. De Luca, could you tell me on what date you took Government's Exhibits 8 and 9 for identification?

A May I see that for a moment?

Q I don't know if this is --

A I have to see the corresponding folder.

Q Do you recall the number of the corresponding folder?

A In the 1971, they were taken.

Q Is 60 for identification the corresponding folder (handing)?

A I see one is here. Yes, I believe this was taken on the 16th.

Q 16th of July?

A Of July.

Q This is Government Exhibit 8 for identification.

A Yes, that's right.

Q Taken the 16th of July?

A That's right.

THE COURT: Of what year?

THE WITNESS: '71, your Honor.

A And this other picture was taken, I believe, on the 22nd of July.

Q Government Exhibit 9 for identification?

A That's right.

THE COURT: In other words, what you have there are just blowups of those that are in the folder; is that it?

THE WITNESS: That's correct, your Honor.

Q 8 and 9 are blowups of smaller photographs in Government Exhibit 60 for identification?

A That's right.

Q Did you know the identities of the persons you were photographing when you took Government Exhibits 8 and 9 for identification? At the time you took those pictures, did you know the identities of the persons?

A On Government's Exhibit 9, no, I didn't. On 8, I knew, I knew several people, yes; in 8 at the time the photos were taken.

Q But you did not know the person nearest the lamp post or nearest the sign, the bus stop?

A Which one is that?

Q Whose right hand is in his pocket.

A No; no, I didn't.

Q Did you make the writings in red on Government Exhibits 8 and 9?

A No, I didn't.

Q Mr. De Luca, I show you Government Exhibit 70 for identification. Would you look at the third photograph, the person -- there is a "2" under his name.

A Yes.

Q Or above his head.

A Yes.

Q Would you tell me whether or not that person is the same person as any of the persons in Government Exhibits

8 and 9?

A No, I don't believe it is.

Q Is that based upon something other than your observation at the time?

A Yes, I believe -- at this time I believe it was.

Q Is that based upon what somebody has told you?

A Yes.

Q I take it you are not able to identify the person near the signpost in Government Exhibits 8 and 9 yourself?

A I don't understand. Able at this time?

Q At this time.

A In 9 I think I am able to.

Q Based upon what someone has told you?

A And also on my own visual awareness.

Q But as to 8, no?

A No, 8 I am not sure of.

Q When you say your own visual awareness, you mean your comparison of what you see in the photograph with what you see in the courtroom?

A Yes.

MR. DUKE: Your Honor, I object to Government Exhibits 8 and 9, and in particular reference to the writings thereon. It is entirely improper that there be any writings -- referring to the writings in red.

THE COURT: There is only one writing that is involved; isn't that so? You have made an identification of the other writings, haven't you?

MR. DUKE: I don't understand your Honor's question.

THE COURT: Hand it up here.

(Photographs handed to the Court.)

THE COURT: Did you tell me that you, from your own visual observation, can now identify the person as to whom a name and an arrow appears on Government Exhibit 9?

THE WITNESS: Yes, your Honor, I did.

THE COURT: All right. Which one of the three writings do you say you are unable to confirm on Government Exhibit 8?

THE WITNESS: Of the three of them I would say this one here, I wouldn't -- I wouldn't be able to confirm.

THE COURT: All right.

Let me have a sticker; scotch tape and a piece of white paper.

MR. LAVIN: Your Honor, those writings were made by other witnesses.

THE COURT: Well, all right, then, for the present record the witness has pointed to the middle writing, that is, there is one on top, one on bottom, and one halfway between. It is the one halfway between that he says that he

does not now identify the writing as the individual indicated. Therefore, before any part of this goes to the jury, either we mask out that center name or you present other proof.

Do you understand that?

MR. LAVIN: Proof was presented, your Honor, in court. A witness on the stand identified that picture.

THE COURT: :Identified this particular picture?

MR. LAVIN: Right, and put that writing down.

THE COURT: I see. All right. Then I will check the record.

Just write down on a piece of paper the name of the witness so that I can find out.

Are there any other objections to the photographs?

MR. PELUSO: On behalf of my client, relevancy, Judge.

MR. LaROSSA: Same objection.

THE COURT: All right. The photographs are all received subject to connection, and are received in evidence subject to my -- and the writings on Exhibit 9 are also received in evidence subject to my confirming the reference that Mr. Lavin is now giving me.

Would you show it to the other lawyers, please?

Is that Exhibit 60?

MR. LAVIN: 8 and 9 and 60 through 71, and 61-A

through 61-H.

THE COURT: All received in evidence subject to connection.

(Government Exhibits 8, 9, 60 through 71, and 61-A through 61-H received in evidence.)

THE COURT: All right, any further questions, Mr. Lavin?

MR. LAVIN: Yes, sir, if I may.

THE COURT: I will mark the matter just handed up by Mr. Lavin as Court's Exhibit 28, and Exhibits 8 and 9 are received together with the markings, on the basis thereof, subject to connection.

(Court's Exhibit 28 marked.)

BY MR. LAVIN:

Q I show you Government Exhibit 9. Can you identify the person in that picture?

A Yes.

Q Who is that?

A That is Vincent Pacelli, Jr.

Q What is the area immediately behind him?

A That is the Ballantine Hair Stylist at 844 Seventh Avenue.

Q That is the picture you took, right, in July?

A Right.

Q And Government Exhibit 8 for identification?

A Yes.

Q Can you identify the persons in that photograph?

A I can identify two that I know. The third person I am not so sure of.

Q Who is the person that you can positively identify?

A That I can?

Q Yes.

A Yes, that's Herbert Sperling, and Louis Mileto.

Q What is the area right immediately behind their back?

A That also is 844 Seventh Avenue.

Q That is Government Exhibit 8 for identification?

A Yes.

Q Sergeant De Luca, can you tell us in 1972 how many persons you identified in the area of Ballantine's Barber Shop?

MR. MITCHELL: Objection.

THE COURT: I have to hear that question again.

(Question read.)

THE COURT: I will sustain that objection.

Q You have examined all the pictures that you have taken?

A Yes, I have.

Q Can you tell us briefly the persons who appeared in pictures that you have taken of the area in front of Ballantine's Barber Shop in 1972?

MR. DUKE: Objection.

THE COURT: I think the difficulty is with the form of the question, Mr. Lavin, and I will sustain it as to form. It is too broad.

Q In 1972 did you observe Herbert Sperling in front of that barber shop?

A Yes, I did.

Q Did you observe Norman Goldstein?

A Yes, I did.

Q Did you observe Mr. Mallah?

A Yes, I did.

Q Did you observe Mr. Lombardi?

A Yes, I did.

Q Mr. Conforti?

A Yes, I did.

Q Mr. Lugo?

A Yes.

Q Mr. Sample?

A Yes.

Q Ismael Torres?

A Yes.

Q Jack Spada?

A Yes.

Q Edward Schworak?

A Yes.

Q During your observations of those persons, was there any pattern of physical movement in front of the barber shop?

MR. LaROSSA: Objection.

MR. DUKE: Objection.

THE COURT: What did you observe about these people in general?

Q When you saw them?

A They were in and around the area of 844 Seventh Avenue, which is the Ballantine Hair Stylist, and also the Gold Rail Bar. And I observed them on many occasions in conversation with each other.

Q Where were they standing?

MR. LaROSSA: I will object and move that be stricken.

THE COURT: Taken subject to connection.

Q Where were they standing?

A There movement was varied during the four or five months' investigation during 1972. Many times they would stand outside the area of the premises of 844 Seventh Avenue. Many times they would stand on the corner of 54th Street

and Seventh. But most times in front of the -- the hair stylist.

MR. LaROSSA: Objection, move those answers be stricken.

THE COURT: They are received subject to connection. The objection is overruled.

Q I direct your attention now to August 16, 1972. As a result of your observations did you do anything?

A Yes, I did.

Q What was that?

MR. LaROSSA: I object to the form of that question.

THE COURT: What occurred on that date?

THE WITNESS: On August 16, 1972, myself and a Patrolman Lino engaged in a surveillance of the Ballantine Barber Shop by utilizing an undercover automobile which was parked in front of the premises at 844 Seventh Avenue which contained Patrolman Lino in the trunk of that auto.

Q Where was it parked in relation to it?

A It was parked right in front of 844 Seventh Avenue by me.

Q What did you do at that time?

A I drove the car up in front of 844 Seventh Avenue with Patrolman Lino in the trunk, got out of the auto, and then went up to the sixth floor of the Hotel

Wellington to take photographs and also to maintain contact with Patrolman Lino.

Q I show you Government Exhibits 61-A, 61-B, 61-C and 61-D for identification. Can you tell us what those photographs are?

A Yes. 61-A shows a view in front of the Ballantine Barber Shop. It also shows six people in the picture and part of the undercover vehicle that was used with Patrolman Lino in the trunk.

Q Would you point out the undercover vehicle?

A Well, in 61-A, B, C and D, it is the only vehicle in the picture. It is a black vehicle with a white top.

Q I hand you a pen. Would you mark the car? Would you indicate the undercover car and the people if you can identify them in those pictures, 61-A, B, C and D?

THE COURT: Ladies and gentlemen, if you don't have any objection, we will just sit straight through until 12:40 so you won't have to break for recess and so on, and then you will have a long lunch. If that is inconvenient for anybody, just let me know by raising your hand and we will take a recess. Otherwise we will just sit straight through. I think we will make more progress by just going ahead.

Q Just abbreviate, now that you marked two of them,

just abbreviate the other names.

A (Witness marks photographs.)

Q On 61-A the persons you identified on the picture are who?

A Benjamin Mallah, Norman Goldstein, the man who was then identified to me as Barney Barrett, Edward Schworak and Herbert Sperling.

Q That is the auto parked next to the curb?

A Right. And the auto.

Q And 61-B?

A Is Mallah, Sperling, and Goldstein. Also with the auto.

In C there is the auto, Sperling, Mallah, Goldstein and Barrett.

In D, there is the auto, Sperling, Mallah and Goldstein.

Q These were taken on August 16?

A That's right.

Q 1972. I show you Government Exhibit 61-E through 61-G in evidence. Can you mark the first one, 61-E, the persons in the picture if you can identify them?

A (Witness marks photograph.)

Q Just the first picture will be sufficient.

Do you know when these pictures were taken?

A Yes, on the same day, the 16th.

Q August 16, 1972?

A Right.

Q Did anything happen at the time these pictures were taken? You have identified Benjamin Mallah and Joseph Lafacci in the picture?

A Yes.

Q Did anything happen at the time, at the time you took these pictures?

A Yes, parts of tneir conversation, parts of the conversation between Sperling and Mallah were overheard during the course of the day.

MR. LaROSSA: I object and move this be stricken.

Q Did you see anything being done?

MR. LaROSSA: I object and move this be stricken.

THE COURT: I will take it subject to connection, with permission to you to move to strike it out later.

Q Did you see anything done at that time?

A After the conversation?

Q During the time of the taking of these pictures?

A Yes, during the course of the day, as the pictures were also -- as I would --

MR. LaROSSA: I object and move that be stricken.

THE COURT: No, no. Let's strike that out.

You just testify for yourself.

THE WITNESS: Yes, I will, your Honor. I'm sorry.

A Yes. I saw Mallah giving the man that was identified to me as Joe Lafacci a sum of money. A short period of time later I saw Lafacci --

MR. LaROSSA: I object and move that be stricken.

THE COURT: It is received subject to connection.

Go ahead.

A A short time later I saw Lafacci return carrying a large shopping bag.

MRS. ROSNER: Your Honor, may I object to the portion of the witness' answer, "Who was later identified to me as" on the ground it is clearly hearsay and I move to strike it.

THE COURT: Would you read back that question and answer in which that appeared since it appeared some time ago.

MRS. ROSNER: It is the last answer, your Honor.

(Record read.)

THE COURT: Strike out the statement "who was identified to me" and just leave in the reference you saw Mallah give someone a sum of money.

Q Sergeant De Luca, how long was that auto parked in front of Ballantine's on August 16, 1972?

A I believe it was about three hours.

Q I direct your attention now to September 6, 1972. Was that car placed again in front of Ballantine's?

A Yes, it was.

Q I show you Government Exhibit 66 in evidence, and a photograph on the right-hand side. The second photograph down on the right-hand side. Can you tell us who are the persons in that picture, if you can?

A Yes, that was a picture taken of me exiting the department vehicle which was parked in front of, I think, Ballantine Hair Stylist.

Q Will you just put your name in there?

A It is over here.

Q It is already marked next to the picture?

A Yes.

Q You didn't take this picture, of course?

A No, I didn't.

Q Is that an accurate representation of what happened at the time the picture was taken?

A Yes, it is.

MR. LAVIN: I have no further questions.

THE COURT: Any cross-examination, Mr. LaRossa?

MR. LaROSSA: Yes.

CROSS-EXAMINATION

BY MR. LaROSSA:

Q Mr. De Luca, referring to that date in August 1972 when you drove this undercover vehicle, as you described it, would you give us the date again, please?

A August 16.

Q Were you the driver of the vehicle that day?

A Yes, I was.

Q Did you say that another police officer, Mr. Lino, was in the trunk of the vehicle?

A Yes, I did.

Q Had you had an opportunity to examine that vehicle before you put Mr. Lino in the trunk?

A Yes.

Q Did Mr. Lino have a walkie-talkie with him that day?

A Yes, he did.

Q Was this a hand walkie-talkie?

A Yes.

Q Was this vehicle equipped with any electronic equipment other than a normal car would have?

A No, it wasn't.

Q There were no special built-in transmitters of any kind?

A There weren't.

Q Were?

A There weren't. There were not.

Q There were not?

A Right.

Q There was no special antennas built in?

A No.

Q Referring to the trunk of the vehicle, can you tell me what, if anything, you did to the trunk of that vehicle that would make it different than a normal vehicle?

A Well, yes. There were three holes in the side of the vehicle from the right rear quarter panel into the trunk. There was also -- this was a Cadillac, and the emblem from the -- the ordinary emblem was removed, which is a red emblem. That was removed from the rear quarter panel to give a visual contact with the outside.

Q Did you have a walkie-talkie as well?

A Yes, I did.

Q And these were normal police-issue walkie-talkies?

A That's correct.

Q How long was the vehicle parked on that August date at that curbside?

A About three hours.

Q Did there come a time when you returned to take the vehicle away?

A Yes.

Q And Mr. Lino was still in the vehicle at that time,

in the trunk?

A Yes, he was.

Q You knew, did you not, what the conversation was between the parties?

A At what time?

Q At the time it was going on.

A No, I didn't.

Q Didn't Patrolman Lino tell you over the walkie-talkie what he had heard?

A Not on the 16th. He did that --

Q But there is no question that Patrolman Lino and you communicated with each other on those walkie-talkies; isn't that right?

A Oh, yes, we did.

Q On a number of occasions?

A Yes.

Q And on some occasions, while the parties were talking, he would ask you to identify them; is that right?

A Yes.

Q Any question in your mind?

A Well, I don't know now while they were talking. I don't recall if he was asking me questions while they were talking. I know during the conversation in general, which lasted a short period, I was asked who they were.

Q By Patrolman Lino?

A Right.

Q On the walkie-talkie?

A Right.

Q How far were these people from the vehicle when he would ask you these questions?

A They were right near the vehicle.

Q What do you mean by right near, sir?

A Sometimes on top of it.

Q Sometimes actually leaning on the vehicle?

A Right.

Q And referring to the trunk of that vehicle, were there ever occasions when you and Patrolman Lino were talking to each other when they were in the vicinity of the trunk of the vehicle?

A Yes.

Q Were there occasions when one of them might be leaning up against that rear fender?

A I don't recall exactly if that -- you know, you know, that during the course of their conversations they leaned on it. I don't know if he was asking me while they were leaning on it. I don't remember that.

Q How long did this conversation take place that we are referring to, when Patrolman Lino asked you to identify

the parties?

MR. LAVIN: I object to the form of the question.

THE COURT: Sustained. You have to fix a date.

MR. LaROSSA: I'm sorry?

THE COURT: You both have been talking about two dates. You had better fix one of the two dates.

Q I am only talking about one date, the August date, not the September date, and all these questions are aimed at that August date.

When was the first communication -- withdrawn.

When did you leave the vehicle on that street?

A You mean what time?

Q What time?

A I'd have to, you know, refer to my records. I don't recall.

Q Please do.

A It was parked at about 2:45.

THE COURT: P.M.?

THE WITNESS: P.M., your Honor; right.

Q On August --

A On August 16.

Q When was the first time you received a communication from Patrolman Lino after that?

A I don't recall, you know, what time it was. You

know, during the day, you know, as he was in the trunk we communicated several times, and I don't recall what time the first one was.

Q When did you remove the vehicle?

A I'd say somewhere around 5:45.

Q So we are talking about approximately three hours, are we not?

A Right.

Q How many communications did you receive during those three hours from Patrolman Lino?

A There were many.

Q Did you make notes of them?

A Many of them weren't initiated by Lino. Many of them were initiated by me, the content of them was to ask how he was, you know, how he is getting along.

Q How many times did he call you on the walkie-talkie and ask you who was speaking during that three-hour period?

A Not many, as I can recall.

Q Tell me how many as best you can recall.

A Maybe once or twice.

Q How many other calls did he initiate from the trunk during that three-hour period?

A I don't recall.

Q Did he call and ask you to get the car out at any

point?

A No, he didn't.

Q Never did that?

A I don't believe he did. I believe -- no, I don't believe he did.

Q Did he call on August 16 and complain about being in the trunk in any way?

A No, he never complained about it at all.

Q You told us that you were only on surveillance for approximately a two-month period in 1971; right?

A Yes, I believe that was it.

Q July and August?

A July and August; right.

Q Do you know whether other officers were there in December 1971?

A No, I don't.

Q You don't know?

A No, I don't know, no.

Q Were you there in December 1971?

A December of '72 -- not -- I wasn't there, no.

Q Do you know whether other officers conducted a surveillance in December 1972?

A No officers that were assigned to me were there during December of '72.

MR. LaROSSA: I have no further questions of this witness.

THE COURT: Mr. Duke, any questions?

MR. DUKE: Yes, your Honor.

MR. LaROSSA: Your Honor, there is just one thing I wanted to look at. May I just reserve the right to ask one or two more questions? I didn't want to hold the court up.

THE COURT: Yes.

MR. LaROSSA: Thank you.

CROSS-EXAMINATION

BY MR. DUKE:

Q Sergeant De Luca, when did you last conduct surveillances of the Ballantine Barber Shop area?

A The last day, as I can recall, was November 13 of 1972.

Q Did your surveillances begin in July of '71?

A That's correct.

Q Approximately how many days during the period from the time your surveillances began until they ended did you conduct surveillances of that area?

A I would estimate maybe 70 days.

Q 70?

A Seven-Oh; right.

Q How many of those days did you take photographs or

did you have photographic equipment with you?

A On many of them.

Q The majority of them?

A Yes, the majority.

Q Approximately how many photographs did you take?

A I would say close to 600.

Q So the photographs that we looked at here today are just a small part of the photographs that you took of that area; is that correct?

A That's right.

Q Would you characterize that area as a fairly busy area in terms of people walking around and going in and out of stores and things?

A Yes, there is a lot of traffic.

Q During the period of time of your surveillance, did you see any people that you recognized as show business people?

A Yes.

Q Actors?

A Yes.

Q Any sports figures?

A Yes.

Q Any lawyers?

A Well, not that I knew at that time.

Q Any that you subsequently identified as lawyers?

A Yes.

Q And these people, were they all -- were they in the general area of the Ballantine Barber Shop?

A Passing, you know, many of them, the people that you mentioned, passed right in front of me.

Q Did some of them stand around and talk to people?

A Yes.

Q Did you happen to see or take a photograph of the then heavyweight champion, Joe Frazier?

A Yes, I took one photo of him.

Q Was he standing around and talking, too?

A Yes.

Q Did you take a picture of a lawyer that was standing around and talking to people?

A Yes.

Q Those pictures aren't in this batch that we have seen this morning, are they?

A No, they are not.

Q Do you know a person named Barry Lipsky?

A Yes.

Q Did you see Barry Lipsky in the Ballantine Barber Shop area?

A No, I didn't.

Q Have you conducted photographic surveillances of other areas other than the Ballantine Barber Shop area during this same period that you have testified about?

A Yes, I believe I did.

Q Did you take photographs of those in connection with those surveillances?

A Yes, there were photos taken. I believe it was one other location.

Q Did you ever in any of these surveillances see or photograph Barry Lipsky?

MR. LAVIN: Objection to the question, form of the question.

MR. DUKE: Withdrawn.

Q During these surveillances did you ever see Barry Lipsky?

MR. LAVIN: Objection to the form of the question. He hasn't established that it was surveillance in connection with this case first.

THE COURT: I think that that's right, Mr. Duke.

MR. DUKE: I didn't hear you.

THE COURT: I say I think Mr. Lavin is right. You haven't established that the surveillance had anything to do with this case.

Q During the surveillances that you conducted in the

area of the Ballantine Barber Shop, did you ever see Barry Lipsky?

A No, I didn't.

Q Did you ever photograph him?

A I don't believe so.

Q Do you know a person named Benny Fabray?

A Not personally, no.

Q Do you know --

A No. By that I meant not personally, officially. I have seen pictures of him.

Q Did you take any pictures of him in front of Ballantine's Barber Shop?

A I took pictures of a person, and those pictures were identified to me as that person being Barry Lipsky. Not Barry Lipsky, Benny Fabray.

Q Do you recall approximately when these pictures were taken?

A I believe it was during the '72 portion of the surveillance.

Q Are any of those pictures of the person identified to you as Benny Fabray in the group that we have seen this morning?

A I don't believe so.

MR. DUKE: Thank you.

THE COURT: Mrs. Rosner, any questions?

MRS. ROSNER: Just a few, your Honor.

CROSS-EXAMINATION

BY MRS. ROSNER:

Q Officer, are you familiar with Detective Hill of the New York Police Department?

THE COURT: Detective who?

MRS. ROSNER: Hill, your Honor.

A Detective Hill? No. What's his first name?

Q I'm sorry. Lieutenant Hill. I'm sorry.

A No.

Q With a Detective Finelli or Fanelli?

A No. I never worked with him.

Q Detective Frank King?

A No.

Q Do you know whether any other officers apart from yourself and Detective Lino engaged in any surveillance at an y time of the area of Ballantine's or the Gold Rail Bar?

A I know at this point from checking department records. No, no, to that question, no.

Q I'm sorry, have you engaged in a check of the department records with respect to whether there was any surveillance of that area of Seventh Avenue at any time?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Have you checked the department records, by that I mean the police department, to determine whether there was any surveillance of that area of Seventh Avenue that you have told us about from January of 1971 through April of 1973?

MR. LAVIN: Objection.

THE COURT: Overruled.

A The question was kind of long.

THE COURT: Have you checked the department records to see whether anybody else was surveilling this Ballantine's area in that period of time?

A No, I don't believe I did check the records for that.

Q Do you know of your own knowledge whether there was any surveillance conducted by any other team or unit in the police department during that period of time from January of 1971 until April of 1973 of the premises you have spoken of?

THE COURT: At Ballantine's?

Q Ballantine's or that area of Seventh Avenue.

A No, I don't know of any surveillance by police department units.

Q Do you know of any surveillance by any other law enforcement units, state or federal, from January of 1971

until April of 1973 of the portion of Seventh Avenue that you have testified about?

A Oh, yes.

THE COURT: You mean has he heard of any other?

MRS. ROSNER: Yes, your Honor.

A Yes, I have heard and worked with several other agencies.

Q What information do you have about surveillance during that period of time?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Do you know whether any federal or joint task force law enforcement group conducted surveillance of that area during that period of time?

THE COURT: He's just gotten through telling you that he didn't know himself of anything. He's heard some things.

MRS. ROSNER: I will rephrase the question then, your Honor.

Q Have you heard whether any joint task force law enforcement group or federal group has conducted surveillance of that area during that period of time?

A During the period from '71 to '73?

Q Yes.

A Yes, there were other groups. There were other law enforcement groups conducting surveillance at that location.

Q Which groups were they?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Do you know whether the New York State -- I'm sorry -- the New York Joint Task Force, that is, the unit comprised of both federal and state law enforcement officers, conducted surveillance of that area during that period of time?

THE COURT: You are asking him for his personal knowledge?

MRS. ROSNER: I am asking him what he's heard, your Honor, from any source.

THE COURT: No, just phrase your question so that we understand what you are doing.

MRS. ROSNER: I'm sorry, Judge.

THE COURT: Are you asking him for his knowledge or are you asking him what somebody has told him or what he has heard?

MRS. ROSNER: My question intends, your Honor, to elicit from the witness --

THE COURT: I don't care what your question intends.

You answer my question. Are you asking him for his knowledge?

MRS. ROSNER: I am asking him what he's heard, Judge.

THE COURT: You are asking him what he's heard.

MRS. ROSNER: I meant no in that context, but I will rephrase it.

Q Have you heard anything, have you heard whether the New York Joint Task Force had a surveillance on that portion of Seventh Avenue during the dates January '71 to April '73?

A Excuse me. By the Joint Task Force, what do you mean? There is an organization named the Joint Task Force.

Q Yes.

A Is that the organization --

Q I refer to the organization which is comprised of both state and federal law enforcement authorities and whose investigations are directed toward drug activities. That unit.

A The Joint Task Force which is located at 201 Varick Street?

Q Yes, sir.

A Which has been in existence for possibly three years?

Q Yes, sir.

A Something like that. To the best of my knowledge,

no, I don't know that that particular unit was engaged in any investigation.

Q Have you heard whether the Bureau of Narcotics and Dangerous Drugs, which is now called the Drug Enforcement Administration, had any such surveillance?

A Yes, they did.

Q Do you know or have you heard during what period of time they were engaged in such surveillance?

MR. LAVIN: Objection.

THE COURT: The form of the question is objectionable since it is a double question.

MRS. ROSNER: I'm sorry, your Honor, I will rephrase it.

Q Have you heard anything concerning the dates during which the BNDD had surveillance on that area within those periods of time?

A No, I know that they had had an active investigation and we worked together on the investigation, but I don't know the exact dates, you know, that they were there.

Q Have you heard whether any other law enforcement authority, apart from your own group or the BNDD, had any such surveillance?

MR. LAVIN: I object to the form of the question.

A Yes.

THE COURT: He answered your question.

Q What group was that?

A Well, there were several that I know of. One was a robbery-homicide investigation being conducted, and there were --

Q Do you know what group conducted that?

A This homicide investigation?

Q Yes.

A I believe it was the Fourth Homicide District, which is Upper Manhattan and/or Upper -- you know, Mid-Manhattan.

Q Do you know when that was?

A I believe during the period of, say, May through August of '72.

There was also the state police investigators were there. I believe they were investigating also homicides.

Q Do you know what period of time that was?

A I believe from April '72 perhaps. Perhaps they are still investigating. I really don't know.

Q Have you ever seen any logs or written memoranda reflecting those surveillances that you have told us about by other groups?

MR. LAVIN: Objection.

THE COURT: Sustained.

MRS. ROSNER: I have no other questions.

THE COURT: Mr. Peluso?

MR. PELUSO: No questions.

THE COURT: Mr. Mitchell?

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Patrolman De Luca, would you look at 61-A and 61-C? Sergeant. I'm sorry. You are promoted.

A No, I was promoted. Thank you.

Q Congratulations.

A Thank you.

THE COURT: Come on, never mind the by-play.

Q On that day which was August 16 -- is that right?

A Yes, right.

Q -- did you conduct an observation of your own on the area after you left the car parked there?

A Yes.

Q And at that time did you know the identity of the individual who is portrayed there in a striped jacket?

A On August 16?

Q Right.

A No, I didn't know his identity.

MR. MITCHELL: At this time, your Honor, I move to strike out the identification.

THE COURT: That is the same application that was made before which I ruled on previously. Motion is denied. The identification as explained by the witness was both visual and by examination of the photograph, if you will recall.

Q In all the photographs which have been introduced in evidence here today, is there any other photograph of the defendant Barrett?

A Of the photos that you have before you?

Q Yes.

A I'm not sure. I really didn't look that closely for content at all the photographs.

THE COURT: That can be stipulated to later on.

MR. MITCHELL: Would you stipulate he is not in any of them?

MR. LAVIN: I haven't examined them.

THE COURT: Look at them during lunch. Examine them and then put the information on the record.

Q From your observation from the Wellington Hotel, do you recall ever seeing Barrett in that vicinity? Other than on August 16.

A Yes, I did see him there.

Q When?

A Many times.

Q When?

A During -- many times during, I believe, August to November of '72.

Q When pictures were taken?

A Yes.

MR. MITCHELL: I have no further questions.

THE COURT: Any redirect?

MR. LAVIN: No, your Honor.

THE COURT: Thank you very much. You may step down, Sergeant.

(Witness excused.)

THE COURT: Do you have a further witness or some evidence?

MR. LAVIN: I have another witness, your Honor.

THE COURT: Well, the jury has been in session all morning. This witness won't be finished in five or eight minutes?

MR. LAVIN: No, your Honor.

THE COURT: All right, then, we'll give you an extended lunch period in honor of the new year.

We will reconvene at two o'clock.

(The jury left the courtroom.)

THE COURT: We will stand in recess until 2:00 p.m.

(Luncheon recess.)

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AFTERNOON SESSION

(In the robing room.)

MRS. ROSNER: I have an application. I believe that Mr. Lavin is going to offer this afternoon objects seized from Mr. Catino at the time of his arrest. I have prepared a written memorandum to hand up to the Court, and if the Court would like I will either explain it verbally or the Court can peruse the memorandum concerning my objections to the offer.

THE COURT: What is the point?

MRS. ROSNER: The point is this, Judge, Catino's arrest on this indictment was September 23, 1973. At that time he was found in possession of a number of thermometers.

Catino had also been arrested in April of 1973 and tried on an indictment related to this, at which Lipsky testified. I think the Court is familiar with that fact.

Now, our point is this, Judge. Sperling, Mileto, Conforti and all the other people at the hub of this conspiracy were similarly arrested and have been continuously incarcerated or are no longer alive since April of 1973. Likewise, Catino was arrested, so as to these people the conspiracy terminated in April of '73. Now, the Government's evidence, viewed in its best light, shows that my man is a receiver from Pacelli and Lipsky, who in turn received their

narcotics from the Sperling group. Sperling has been continuously in custody since April of '73. Pacelli has been continuously in custody since February of '72. Lipsky likewise since March of '72. So that under any view of the law or evidence, conspiracy necessarily terminated as to my man at the very latest April of '73 with his own arrest.

Now, the Government seeks to introduce an object seized from him in September of 1973, and I would object to the admission on the ground that the conspiracy having terminated, the evidence seized in September of 1973 cannot be relevant to that conspiracy. The thermometers might perhaps evidence criminal activities, but they could not be criminal activities related to the subject matter of this indictment because of the arrest and incarceration of all the people he is connected with and his own arrest in April of 1973.

THE COURT: What about the substantive counts?

MRS. ROSNER: Likewise, your Honor, it would be inadmissible on that count. It has nothing whatsoever -- the dates of the substantive counts are September, I believe, of 1971, and perhaps -- I think there is only one substantive count as to Catino, Judge, and I think the date is September or thereabouts of 1973, so that under no theory can this be evidence of either the crime of conspiracy, which as to him

terminated in April of '73, or the substantive count which is even earlier, this is some two years later. It may be evidence of some other crime, but it is just not evidence of what is charged in the indictment.

THE COURT: Well, it seems to me you've got a non sequitur involved there. What do you say?

MR. LAVIN: Well, I think at the least, possible conspiratorial statements of a co-conspirator which shows he was engaged in the conspiracy prior to when the conspiracy ended are always admissible to show there was a conspiracy, and these thermometers, for whatever probative value they have, would show that, you know, the Government is going to argue that he was carrying those things, for whatever purpose he was going to use them.

THE COURT: The non sequitur is that you have selected some of the wide array of co-conspirators and said that they were arrested, therefore their particular acts may not have been relevant to your client. But the fact that your client was arrested does not mean that he was not a co-conspirator with that whole group that you did name, and consequently, the termination of the conspiracy is not proved from the fact that he is arrested. It may be that the others are not bound after his arrest by what he does, but he can continue to be bound until he withdraws from the

conspiracy by some act of his own or there are no co-conspirators. But that is not the showing here.

MRS. ROSNER: I think I can answer that, Judge.

I mentioned the people that I mentioned not because they were the only ones arrested, but because they are the only people who are linked with my client in the evidence.

THE COURT: He may be linked with the evidence, but you see, again I say you have a non sequitur. If at some time within the period when they were all co-conspirators some of them drop out, it does not mean that he drops out until the conspiracy is ended.

MRS. ROSNER: Correct, your Honor, but I think Krulewich and Grunwald in the Supreme Court, the conspiracy terminates with the arrest of the participant himself, and my man was arrested in April 1973.

THE COURT: No, the conspiracy doesn't terminate with the arrest of the man. His agency to somebody else terminates.

MRS. ROSNER: Your Honor, if I may add one other thing. I phrased it the way I did because of the way the evidence has come in. Catino is viewed in the evidence as having been a receiver from Pacelli and Lipsky. They are out of the picture by reason of incarceration in early 1972. The only people he has contact with are Pacelli and Lipsky.

But apart from that, Judge, all of the known co-conspirators on this indictment were arrested in April of 1973 except those who were fugitives. So that under no view of the law or the facts was there a conspiracy -- going beyond April of 1973. There wasn't anyone left on the street. They were all arrested except for those who were actually fugitives.

THE COURT: I have your point.

Anybody else have any points?

MR. LaROSSA: There is something very similar to this. As you know, Mr. Mallah was indicted in the original Sperling indictment and that indictment read "up to and including the filing" of that indictment, which was, I assume, sometime in March or April 1973. When he was arrested he was arrested with a sum of money. I think it is the Government's intention to offer this money, post the filing of the indictment and at the time of the arrest.

THE COURT: That is because the Government is contending that he took off, disguised himself, and concealed his identity, and that is the basis on which they are trying to bring that proof in.

MR. LaROSSA: On the money as well?

THE COURT: Now, look. Let's try the case out there.

MRS. ROSNER: I have one other ground of objection,

your Honor. I understand from the Government and from the 3500 material that's been provided that the thermometers were tested for the presence of narcotics with negative results, and I would further urge that they are inadmissible for the reason that there is no probative value.

THE COURT: You mean a thermometer is a thermometer?

MR. LAVIN: Thermometers in the testing process never touch narcotics, so --

THE COURT: That point is not important. But what is the big importance of this thermometer? Mrs. Rosner seems to be all wound up about the thermometer.

MR. LAVIN: Well, the defendants were arrested with eight chemical thermometers. The other defendants have testified they used chemical thermometers.

THE COURT: What does that prove?

MR. LAVIN: I think the jury can draw an inference.

THE COURT: Maybe this man has a running temperature that he likes to keep taking with a different thermometer every two hours.

MR. LAVIN: I think that is something that he should argue to the jury or he should present some evidence that he was using those thermometers for a purpose other than illegitimate. I think they are very probative. They are exactly the same manufacturer as the one Conforti was

arrested with and that he was using. They are chemical thermometers. No other use for them, you know, I believe, or I think, other than --

THE COURT: Don't you take human temperature with a chemical thermometer?

MR. LAVIN: Not with these, your Honor. They are about that long.

MR. MITCHELL: Maybe they are sadists.

MR. LaROSSA: Will I have an opportunity to speak to the issue of flight before the issue is introduced, or do you want me to do it now? Any way that your Honor chooses.

THE COURT: When are you going to present that evidence?

MR. LAVIN: Directly after Lino; Moriarty. Moriarty is about two minutes. He is the one who is going to introduce the thermometers and then Sanders.

THE COURT: Are you in a position without injuring your hand to tell what your flight evidence is?

MR. LAVIN: Yes,I --

MR. LaROSSA: I think he has already.

THE COURT: Will you state what your point is?

MR. LAVIN: Well, I will do it in inverse order since that is the way you want me to present it.

THE COURT: The Government proposes to prove what?

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MR. LAVIN: That on August 16, 1973 -- I believe that is the date -- Special Agent Samuels and other agents went to an apartment on East 69th Street and in the apartment they knock at the door, gained admittance and they arrested Mr. Mallah. He was wearing a moustache, he had in the apartment a wig, identification, rather complete, in the name of Morris Geller. Identification included a social security application in the name of Morris Geller, a lease for that apartment in the name of Morris Geller, a bankbook with a number on it and an accompanying card with a picture of Mr. Mallah on it wearing a toupee and the moustache, and the bankbook was in the name of Morris Geller.

THE COURT: How long before April '73 had he been using the name Geller?

MR. LAVIN: We have no evidence that he was using the name Geller.

THE COURT: Before then?

MR. LAVIN: Before he was arrested. There was other identification in the room in the name of David Barton. I believe that is old identification. There was a driver's license from Florida and other identification. But the Morris Geller identification is fairly new, and in addition to the identification papers he was also seized with $8,550 U.S. currency and $7300 of that was in hundred-dollar

bills.

I think evidence is always admissible on large amounts of unexplained money.

THE COURT: What do you say, Mr. LaRossa?

MR. LaROSSA: Well, with respect to the money, for one thing --

MR. LAVIN: I'm sorry, your Honor, if I may, I forgot to finish.

Mr. LaRossa and I have also agreed to stipulate that if called to testify, Nancy O'Malley would testify that on April 15, 1973, Benjamin Mallah was in her apartment in Hallandale, Florida, went downstairs to get a paper, came back upstairs, says there's been some trouble, I have to leave, and then he packed up his belongings and left her apartment.

The indictment, the docket entry will show that on April 13, two days before he said that to her, the indictment was filed, 73 Cr 330, charging him and all the other people with conspiracy, and on April 13 a bench warrant, 1973, a bench warrant was issued for his arrest, so it is two days after the bench warrant is issued that he has this conversation saying "There's been some trouble, I have to leave." He leaves.

MR. LaROSSA: I speak first to the identification, if I may. We passed over that quickly. Within the papers

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seized from Mr. Mallah are things like a lease, rent receipts, a contract between a landlord and he under the name -- there were two names --

MR. LAVIN: Morris Geller.

MR. LaROSSA: I am talking about the prior one. Is that Barlow?

MR. LAVIN: Barton.

MR. LaROSSA: Barton, the man's used as an assumed named going back as far as 1970.

THE COURT: That is some evidence of concealment of his identity.

MR. LaROSSA: Flight to avoid prosecution?

THE COURT: No, I didn't say that. I said that is leg one. That is the first leg. Now what? Fellow operating under two names.

MR. LaROSSA: Yes, sir.

THE COURT: All right.

MR. LaROSSA: I submit that they must prove, that the evidence must prove that to avoid prosecution he flees.

THE COURT: All right. That does not indicate he did it to avoid prosecution, but that is some evidence when taken with the totality of all the facts and circumstances.

MR. LaROSSA: I submit to you that based upon the fact that the man long before this ever occurred, before

there was ever an indictment here, did exactly the same thing. And I submit to you that that --

THE COURT: That is bad for him. Now what?

MR. LaROSSA: I don't see it.

THE COURT: All right.

MR. LaROSSA: I submit to you that that prohibits you --

THE COURT: I am not arguing the appeal at this moment, but I think that is bad for him.

MR. LaROSSA: It might be bad as a factual issue, but I submit to you that it shouldn't go into evidence. That it is not flight to avoid prosecution when a man does it years before.

THE COURT: That single fact unaccompanied by other facts would not be flight to avoid prosecution. That isolated fact; correct. But that is not the story.

MR. LaROSSA: Then it shouldn't be introduced.

THE COURT: What you are saying is that you can't present the pieces of a jigsaw puzzle because each piece is not self-proving?

MR. LaROSSA: No, sir. I am suggesting that this is long after the indictment now is filed, we are talking about months after all this occurs now.

THE COURT: You just got through telling me that

for months before this, he was operating under the name Geller.

MR. LaROSSA: I am talking about the seizure. I am talking about the seizure of the items that we are talking about.

THE COURT: The $8500?

MR. LaROSSA: And the identification we are talking about were all seized subsequent to the arrest.

THE COURT: That is in a different category. I am not sure about the $8500 months later, unless it is claimed that he hasn't shown that all tentacles of the conspiracy have terminated.

MR. LAVIN: I think that is rather evident from your Honor's observations of the people who are fugitives, including some of the people that were dealing with Sperling at the time. Mr. Spada was a fugitive at that time. When he was arrested. Torres, a host of others, and a lot of these people were down in the barber shop during the time Mr. Mallah was around. They were dealing with Sperling. Torres had a conversation with Sperling and in front of that mailbox.

THE COURT: I think the rest of it we will take from the questions.

(In open court; jury present.)

THE COURT: Next witness.

MR. LAVIN: Patrolman Lino.

G E R A L D L I N O , called as a witness by the Government, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q What is your present duty assignment, Patrolman Lino?

A New York Joint Task Force.

Q In the summer of 1972, where were you assigned?

A I was assigned to the Third Narcotics District.

Q Did you have any specific duty assignment at that time?

A Surveillance of Herbert Sperling.

Q Where did that surveillance take place?

A Took place from the Wellington Hotel at 844 Seventh Avenue.

Q Was that from a room in the Wellington?

A Yes, it was.

Q What did you observe from that room?

A The entire Seventh Avenue from 55th Street down to about 50th Street; 49th, 50th Street.

Q Did you have any equipment with you while you were conducting the surveillance?

A Yes, we did, we had telephoto lenses, camera,

binoculars, and that was it for the first part of the investigation.

Q When did you begin your surveillance duties at the Wellington?

A Beginning of August, August 2nd, I think it was.

THE COURT: What year?

THE WITNESS: 1972.

THE COURT: August 2, 1972?

THE WITNESS: That's right.

MR. MITCHELL: Would your Honor ask the witness to speak a little louder?

THE COURT: Speak up so they can all hear you.

Q Do you know a Mr. Benjamin Mallah?

A Yes, I do.

Q Do you see Mr. Mallah in the courtroom?

A Yes, I do.

Q Would you point him out for the Court and jury, please?

A The man with the glasses and the moustache.

MR. LAVIN: May the record reflect that the witness has identified Benjamin Mallah.

Q Do you know a person by the name of Barney Barrett?

A Yes, I do.

Q Do you see Mr. Barrett in the courtroom?

A Yes, he is sitting right in the -- the second one from my left.

Q What is he wearing?

A A striped,blue-striped jacket and a blue shirt.

MR. LAVIN: May the record reflect the witness has identified Barney Barrett?

THE COURT: Yes.

Q During the time you were in surveillance did you ever see Mr. Mallah in front of the barber shop?

A Yes, I did.

Q Did you see Mr. Barrett there?

A Yes.

Q Did you see Mr. Conforti?

A I never saw Mr. Conforti, no.

Q Did you see Mr. Torres?

A Yes, I did.

Q Mr. Samples?

A Yes.

Q Mr. Salanardi?

A Yes.

Q Mr. Lombardi?

A Yes.

Q During the time you were on surveillance did you observe these people that you just mentioned doing anything

in front of that barber shop?

A They engaged in conversation quite often in front of the barber shop. They would talk in front of the barber shop by the bus stop sign which is right in front of the barber shop, and also by the Gold Rail Bar.

MR. LaROSSA: Objection. Move the answer be stricken.

THE COURT: No, we will receive it subject to connection.

Q I direct your attention to August 16, 1972. Were you on duty that day?

A Yes, I was.

Q Can you tell us where you were?

A I was secreted in the trunk of a department car, and it was parked in front of 844 Seventh Avenue by the bus stop sign.

Q Where did you enter that car? The trunk of that car?

A I entered the car down on the West Side underneath the highway.

Q Who was driving?

A My superior, Sergeant De Luca.

Q Was anything done to that car, the trunk?

A Yes. There were four drill holes drilled in the

side,in the right rear side looking front the back, and the right rear directional signal was removed which left a clear place for me to see out of.

Q When you were parked, where was that directional signal? Where was it facing?

A It was facing the barber shop, Ballantine's Hair Stylist.

Q Can you tell us what you could observe from that, from the hole in the side of the car?

A Yes. I could observe the building line from the Gold Rail Bar down to a couple of feet past the building line of the Ballantine's Hair Stylists.

Q What did you have in the car, in the trunk?

A A pillow and a walkie-talkie.

MR. LaROSSA: I'm sorry, I didn't hear that.

THE COURT: He said a pillow and a walkie-talkie.

Q I direct your attention to about 3:20 p.m. on August 16, 1972. Were you stlll in the car at that time?

A Yes, I was.

Q Did you observe anything at that time?

A Yes, I did.

Q Can you tell us what that was?

A Herbert Sperling and Benjamin Mallah were in conversation in front of the Ballantine's Hair Stylists.

Q Did you see anything else at that time?

A Yes, they walked over towards the rear fender of the car where I was, the trunk.

Q I show you Government Exhibit 61-A through 61-D in evidence. There is a car in that picture. Can you identify the car?

A That is the car I was in.

Q Where was the hole that you described in the car as far as the reflector being taken out?

A You can't see it in this photo, but it is on this side of the fender facing like about adjacent to the pole.

Q Would you take this pen and draw a line, an arrow, and indicate where the reflector was taken out, where you observed?

THE COURT: Make a circle.

Q Circle the area.

A On the side of the car, it would be down about here.

Q Would you write "reflector" so we know?

A (Witness writes on photograph.)

THE COURT: What exhibit was that?

MR. LAVIN: I'm sorry, he marked Government Exhibit 61-A in evidence.

MR. LaROSSA: May I see it, please?

Q I believe you testified you observed Mr. Sperling

and Mr. Mallah in front of the Gold Rail or in front of the Ballantine Barber Shop?

A That's correct.

Q Can you tell us what they were wearing at that time?

A Yes. Mr. Mallah had on a light pair of pants and again light top, and Mr. Sperling had on loud striped pants and I think white shoes.

Q What else did you observe at that time, if anything?

A They walked over to the auto that I was in, and they were in conversation as they were walking. They were talking by Ballantine's and they continued talking as they walked over towards the bus stop pole where the car was.

Q As they walked over, could you see them at that time?

A Yes, I could.

Q What about when they got to the car?

A When they got to the car I could only see the bottom half of their bodies, their pants and shoes.

Q Did you hear anything at that time?

A Yes, I did.

Q Would you tell us what you overheard, if anything?

MRS. ROSNER: Objection, your Honor.

MR. MITCHELL: Objection.

MR. LaROSSA: Objection.

THE COURT: This is taken subject to connection.

MR. LaROSSA: Objection on the ground of foundation, your Honor.

THE COURT: Tell me on a piece of paper what's wrong with the foundation.

MR. LaROSSA: I showed it to Mr. Lavin.

(Paper handed to the Court.)

THE COURT: Court's Exhibit 29.

(Court's Exhibit 29 marked.)

THE COURT: Objection is overruled. This is taken subject to connection.

Q Would you tell us what you overheard, if anything?

THE COURT: What did you hear?

A Yes. The conversation was between Mr. Mallah and Mr. Sperling.

Q How could you identify them from where you were in the car?

A As I said before, I saw their clothing as they walked over towards the car. I could actually watch them as they walked towards the car. I couldn't see the top half of their bodies once they got there. The conversation went like this. It was Sperling was talking to Mr. Mallah, and he says, "I got to have" --

MR. LaROSSA: Objection.

A Sperling was talking to Mr. Mallah.

MR. LaROSSA: Objection. Move to strike.

THE COURT: How did you know it was Sperling talking?

THE WITNESS: I could more or less see the pattern of the speaking, you could hear first of all -- you could hear Mr. Sperling, you know.

THE COURT: What do you mean by the pattern of the speaking?

THE WITNESS: Well, he would even when he talked he would move.

THE COURT: The question arises now how you knew who was doing the talking between the two men.

THE WITNESS: I could hear. You could see them standing, you know, side by side, and you can actually hear the direction of the voice. I was listening.

THE COURT: Could you see two people? How did you know which one was talking?

THE WITNESS: Because I could hear and also I would, if possible, I radioed up to my supervisor who was watching from the room and asked who was by the car. But the only other way that we would know would be just from my own knowledge of the two individuals standing here, and

you can hear the difference in the voices.

THE COURT: Did you know which one was Sperling talking and which one was Mallah talking?

THE WITNESS: Yes. I heard Herbert Sperling's voice not just from walking by, you know, and he would say something to somebody. If I was walking by the area I could hear his voice.

THE COURT: You recognized his voice?

THE WITNESS: Yes, I did.

THE COURT: Did you recognize his voice in connection with this conversation?

THE WITNESS: Yes.

THE COURT: To the extent that you heard it?

THE WITNESS: Yes, I could.

THE COURT: Go ahead. What did you hear?

THE WITNESS: It was a conversation again, I said, between Mr. Mallah and Mr. Sperling. Mr. Sperling said to Mr. Mallah, "I got to have the stuff." Mr. Mallah said, "Don't worry about it." Mr. Sperling said, "50 thou; [illegible], right?" Mr. Mallah said, "Yes, right, 50-50," and Mr. Sperling said, "But I got to have it. You know, I need it."

He says, "Don't worry about it. I'll see the people this afternoon, tonight or early tomorrow. You should have it."

He says, "But I need it."

Q Who said that?

A Mr. Sperling says, you know, "But I need it."

And again Mr. Mallah said, "Don't worry about it. If the people were straight, if they are not on the run, we should have it."

Q What happened at this time?

A At this time Mr. Mallah and Mr. Sperling entered the Gold Rail Bar, and Mr. Barrett exited that bar, came out of the bar, and Mr. Goldstein asked him, "What's up? Are they going to get it?" And Mr. Barrett answered with, "I don't know."

MR. LaROSSA: I object to this.

THE COURT: You haven't told us yet how you identified the people who you allegedly saw and heard.

THE WITNESS: I could see Mr. Barrett speak.

THE COURT: Did you know Mr. Barrett from previous-- previously?

THE WITNESS: We had him identified as --

THE COURT: Previously?

THE WITNESS: At that time I'm not sure if we had him identified as Mr. Barrett, but we had him identified as Number 3, which we just, you know, went down the line.

THE COURT: When you say you had him identified,

you mean he was identified to you or you identified him prior to the time of this conversation?

THE WITNESS: To the time of this conversation, no, he wasn't identified as Barney Barrett, no. He was identified to us as Number 3.

THE COURT: Number 3?

THE WITNESS: Right. That we identified him as such.

THE COURT: Do you see Number 3 in court?

THE WITNESS: Yes, I do.

THE COURT: Who is he?

THE WITNESS: He is the man sitting second from the left with the blue striped jacket and blue shirt on.

THE COURT: No, you mentioned another name. Did you know who he was prior to this conversation?

THE WITNESS: Yes, I did.

Q Who was that?

A Sonny Goldstein.

Q How did you know him?

A He was a subject of investigation from 1971. And I was -- he was identified to me by my old partners, and through that investigation, you know.

THE COURT: So you had known him through a prior investigation?

THE WITNESS: That's correct.

THE COURT: And you now say you saw these two people conversing?

THE WITNESS: Yes.

THE COURT: Start again. You saw them coming from someplace?

THE WITNESS: I saw --

THE COURT: Go ahead.

THE WITNESS: -- Mr. Barrett come out of the Gold Rail Bar, and Mr. Goldstein was standing to the right of the auto that I was in. And I could see Mr. Barrett speak to Mr. Goldstein. And Mr. Goldstein asked him, like I said before, "What's up? Are we going to get it?" And Mr. Barrett said, "I don't know." Mr. Goldstein told him to go back in and find out, at which time Mr. Barrett went into the bar and came out a second or two later and said, "Yes, we should have it tomorrow." That was it.

Q How long were you in the car on that occasion?

A About three hours.

Q I direct your attention now to September 6, 1972. Were you on duty that day?

A Yes.

Q Where were you?

A I was in the same car, parked in front of 844

Seventh Avenue.

Q How long were you in the car on that day?

A Same period of time, about three hours.

Q Who had parked the car?

A My supervisor, Sergeant De Luca.

Q Can you tell us what you could observe on that day?

A The same area, you know, from the Gold Rail Bar down to Ballantine's Hair Stylists, about ten feet up.

Q Did you observe anything while you were in the car?

A Yes, I observed Norman Goldstein and Herbert Sperling in conversation in front of Ballantine's Hair Stylists.

Q Did you overhear the conversation at that point?

A Yes, again, you know, they walked over to the bus stop sign where the car was parked, and Mr. Sperling was talking with Mr. Goldstein, and Mr. Goldstein asked him, you know, "What's up," and he said -- Mr. Sperling answered with, "I don't know, I have to get in touch up at the hotel." And Mr. Goldstein asked him, "How are you going to do that?" And Mr. Sperling answered with, "By phone. I'll call up by phone."

Mr. Goldstein, you know, loudly said, "Well, don't get stupid." And Mr. Sperling answered with, "What am I

supposed to do, stand around here like a fool? What am I, some kind of an idiot?"

So Mr. Goldstein said, "Well, if you want to, you know, get in touch, you know, get in touch."

And he says, "But how are you going to do it? What if you can't get in touch?" He said, "Well, I'll go up to the hotel myself, get it, and bring it down." And Mr. Goldstein answered with, "If you want to go up and get it yourself, go up and get it yourself."

That was the end of the conversation.

Q How long have you been on the police force, Patrolman Lino?

A Four years.

Q In 1972, how long were you on the police force?

A 1972?

Q Yes.

A It would be about two and a half years at that time.

Q How long had you worked in narcotics at that time? I am talking about August and September of 1972.

A For about a year, year and a half.

Q Did you attend any schools prior to your joining the narcotics?

A Yes.

Q What schools were they?

A It was the -- well, it is a narcotics course given by the police department prior to going into narcotics.

Q How long was that?

A That went for six weeks.

Q Was some of the course the terminology of the streets, as far as narcotics is concerned?

A Yes.

Q After you finished your course, did you ever have occasion to talk to your fellow officers about surveillance duties and things that were overheard and slang for narcotics?

A Yes.

MR. LaROSSA: Objection.

THE COURT: Overruled.

Q You did?

A Yes, I did.

Q How many arrests, narcotics arrests, had you made in 1972, prior to August?

MR. LaROSSA: Objection.

THE COURT: Sustained.

Q You testified you overheard Mr. Mallah and Mr. Sperling talking about stuff, in August?

A Yes.

MR. LaROSSA: I object to the form of the question.

THE COURT: Well, it is preliminary. Go ahead.

Q Can you tell us what that word means, what you believed that word meant?

MR. LaROSSA: Objection.

THE COURT: The objection is sustained.

What did that word connote to you?

MR. LaROSSA: Objection. May it please the Court, most respectfully.

THE COURT: Overruled.

A It meant a quantity of narcotics.

Q You testified before that Mr. Mallah and Mr. Sperling were -- Mr. Mallah was wearing light trousers and Mr. Sperling was wearing loud trousers?

A Yes.

Q I show you Government Exhibit 61-A for identification which were pictures taken on that day. Is that the clothes that Mr. Mallah was wearing?

A Yes.

Q When you overheard him in conversation?

A Yes.

Q And 61-B, is that a picture of Mr. Mallah and Mr. Sperling standing next to the car you were in?

MR. LaROSSA: I object to the form of the question.

THE COURT: Yes.

MR. LAVIN: Those are in evidence.

THE COURT: Just let me say that Court's Exhibit 30 has been received.

(Court's Exhibit 30 marked.)

THE COURT: Put the question again, please.

Q You testified that --

THE COURT: Never mind about what he testified. The jury heard it. What is the next question.

Q On Government Exhibit 61-B, is that the clothes that Mr. Mallah and Mr. Sperling were wearing when you overheard the conversation on August 16?

A Yes.

Q Is that the car you were in on that occasion?

A Yes.

Q And 61-C for identification?

A Yes.

Q And 61-D for identification?

A Yes.

MR. LAVIN: Your Honor, could I just pass these to the jury at this time?

THE COURT: Yes.

(Photographs handed to the jury.)

THE COURT: Pass them down one by one as you look at them. Then they will circulate quicker.

Anything else, Mr. Lavin?

MR. LAVIN: No, your Honor, I have no further questions.

THE COURT: Mr. LaRossa?

MR. LaROSSA: Yes, sir.

CROSS-EXAMINATION

BY MR. LaROSSA:

Q Mr. Lino, talking about August 16 now, please, how many hours were you in that automobile's trunk?

A About three hours.

Q During that time I assume you were alone, were you not?

A Yes.

Q You told us that you had a pillow and a walkie-talkie?

A That's correct.

Q I assume the pillow was nothing more than to give you some comfort if it could?

A Comfort, and also if I had to use the walkie-talkie I could use it as a muffler.

Q Did you use the pillow as a muffler?

A Yes.

Q How many times did you talk on that walkie-talkie during those three hours on August 16?

A I don't know. A few times. I didn't count them.

Q Do you know whether you spoke on the walkie-talkie at all on August 16?

A I am pretty sure I did, yes.

Q Did you ever on August 16 ask on the walkie-talkie who individuals were?

A On the 16th, I don't remember.

Q You don't know whether you did that or not?

A I don't know.

Q Had you heard Benjamin Mallah speak before August 16?

A No.

Q Have you ever met him since them?

A No.

Q Did you know Benjamin Mallah's face before August 16?

A Yes.

Q You said that you could see out through these holes that were created in the side of the fender; is that right?

A Through the directional signals, which was taken out.

MR. LAVIN: He was answering the question.

A I couldn't see through the holes that were drilled in the side. It was the directional signal light which was

taken out that allowed me to see out.

Q And is this what you marked on 61-D and called "reflector"?

A I can't see the photo.

MR. LaROSSA: May I show it to him, please?

(Photograph handed to the witness.)

A Yes, on the side.

Q Is that what you mean by the area that was removed so that you could see out?

A Yes. But not this piece here. It is a side light, which Cadillacs have. It comes right out. It is on the side.

Q What replaced that side light, Mr. Lino; anything?

A Nothing.

Q So in other words it was just an open hole that you could see out?

A No.

Q What was in place of the light?

A There was the original clear plastic which stayed on.

Q And you could see out through that clear plastic; is that right?

A That's correct.

Q Could someone see in through the clear plastic?

A I don't know.

Q Before you put yourself in the trunk of the car did you look from the outside in to see whether or not you could see into that trunk?

A Did I? No.

Q Do you know whether anyone did?

A I think my superior did, yes.

Q And you put some air holes in there as well, didn't you?

A That's correct.

Q Do you know whether or not you could see through those air holes into the trunk of the car?

A Again, I think my superior did, yes.

Q You didn't?

A I didn't, no.

Q Did you tell anyone on that walkie-talkie on August 16 what you had heard?

A On August 16? No, I don't think I did.

Q Did you tell anyone on that walkie-talkie that it was about time that they got you out of there on August 16?

A No.

Q You are sure of that?

A Yes.

Q Tell me what you did on that walkie-talkie on

August 16.

A I usually asked questions such as can I move. You know, would it be obvious if I moved in the trunk of the car, or -- that guideline, and I may have asked if -- who was that, and who was that, but I can't remember now the exact questions I may have asked over the walkie-talkie.

Q Did you ask when you saw Mr. Mallah approaching the car who that was?

A No. I observed Mr. Mallah approaching the car.

Q Did you ask?

A No.

Q Anything on the walkie-talkie at that point?

A No.

Q What was your visual range when you looked out, from what to what?

A From the Gold Rail Bar to the building line a little -- about two feet past the building line of the Ballantine's Hair Stylists.

Q I show you what has been marked as Exhibit 61-A. Is your entire range of vision in that picture?

A No.

Q Looking toward the right of the picture, was there more of a range than that?

A Yes.

Q How much further from the point where this picture ends on the right could you see?

A I don't know the footage.

Q Can you tell us whether any one of these stores is the barber shop?

A You can see the window of the barber shop, which goes up here.

MR. LaROSSA: Could we mark that, your Honor? There is nothing that indicates that it is a barber shop.

Could he put Bs for barber shop, please?

(Witness marks photograph.)

Q Mr. Lino, could you see the entire barber shop left to right?

A Yes, I could.

Q Could you see anything on the right of that barber shop?

A Yes, I could.

Q What was next to the barber shop?

A The Gold Rail Bar.

Q Could you see the whole bar?

A Yes.

Q What was next to the bar? I am talking to the right, now.

A From the car?

Q Yes.

A I couldn't say.

Q Nothing beyond the bar?

A Right.

Q Looking at the picture here it shows a dry cleaner.

A Yes.

Q Could you see that entire building?

A I could see.

Q That entire store?

A I could see the doorway. As I said, about two feet past the building line of the barber shop. Whichever two feet is. I guess about two feet, about up to here.

Q Of the doorway?

A That's right.

Q So, am I correct in stating, then, that the man in the upper left-hand corner here would be out of your range?

A Yes.

Q Mr. Lino, in that school you went to, I assume you were taught the importance of preserving words that you heard in an investigation?

A Yes.

Q And you certainly believe that those words you heard in that car were important, didn't you?

A Yes.

Q And you got them down on a piece of paper as quickly as you could, didn't you?

A As quickly as I could, that's correct.

Q This was within hours of the time you heard it?

A It was about an hour, maybe an hour and 15 minutes.

Q Did you make any notes in the trunk of that car?

A No.

Q So you tried, did you not, during that hour to preserve those conversations in your mind;right?

A Yes.

Q You told us that when you saw Mr. Mallah and Mr. Sperling approach you, you heard Mr. Sperling speak first, did you not?

A Yes.

Q What did he say, Mr. Lino?

A "I got to have the stuff."

Q Then who spoke?

A Mr. Mallah.

Q What did he say?

A "Don't worry about it. We'll have it."

Q Then did Mr. Sperling speak?

A Yes, he did.

Q What did he say?

A "50 thou; right?"

Q Is that what he said, Mr. Lino?

A That's what I remember him to say.

Q I refer you to Exhibit No.3561, and I ask you to read this to yourself. First tell us whether that's a report that you assisted in preparing.

A It looks like a photostat of a report I assisted in preparing, yes.

Q Haven't you ever seen that before?

THE COURT: He said it looks like a photostat.

A I said it looks like a photostat.

Q I'm sorry. Well, the original of that photostat, sir. Is that a report that was prepared by you?

A With my assistance, yes.

Q And you have read it before?

A Yes.

Q And I assume you haven't corrected anything, have you?

A On that report?

Q Or changed anything on that report, have you?

A No.

Q Does it say "50 thousand" or "50 thou" on that report, Mr. Lino?

A It says 50.

Q It just says 50, doesn't it?

A Yes.

Q And an hour after you heard that conversation you put down on a piece of paper 50, not 50 thou; isn't that right?

A That's correct.

Q When did you decide that it became 50 thou?

MR. LAVIN: Objection to the form of the question.

THE COURT: Yes, sustained; as to form only.

Q When was this report prepared?

A That report?

Q Yes, sir.

A Would be prepared that evening, or right after we were through with the investigation.

Q Typed that evening?

A Typed that evening.

Q Was it signed by you?

A If I typed it, yes.

Q Did you read it?

A Yes.

Q Did you initial it or sign it?

A The report that I put in? Yes.

Q Did you change that 50 to 50 thou?

A No.

Q That was an important conversation in that report,

wasn't it?

A Yes.

Q And you read it at least once, didn't you?

A That's correct.

Q Did you type it yourself?

A I don't remember if I typed it or not, because I was, you know --

Q Was this prepared from notes that you had?

A Yes.

Q Where are the notes, Mr. Lino?

A The notes that we -- our other investigators' reports that we --

Q Did you write out any handwritten notes before you prepared this?

A Did I?

Q Yes.

A My supervisor did I think, yes.

Q Did you dictate them?

A Yes.

Q Where are they?

A They would be with our other notes and so forth.

Q You mean in addition to this report, there would be handwritten notes reflecting that conversation?

A We wrote the notes on whatever we had available

at the time, you know, and then they were transcribed onto handwritten, and then typed.

Q Where are the notes, the original handwritten notes?

A The original notes?

Q Where are the notes you wrote on whatever you had available?

A Like I say, they were handwritten again on paper, so the original notes --

Q What did you do with the original pieces of paper that you wrote down the notes on?

A They would be with the other records that we had.

THE COURT: I have previously received Court's Exhibit 31 which I will deal with later.

(Court's Exhibit 31 marked.)

THE COURT: I now have Court's Exhibit 32.

Have you seen Court's Exhibit 32, Mr. Lavin?

MR. LAVIN: Yes, I have.

(Court's Exhibit 32 marked.)

Q Mr. Lino, when is the last time you saw those handwritten notes?

A I think it was in Mr. Lavin's office.

Q When?

A I think it was -- I am not sure of the date or the day, you know. It was prior to the beginning of the trial.

Q Tell me, Mr. Lino, if the judge declared a recess right now --

MR. LAVIN: Objection, your Honor.

THE COURT: No, no.

MR. LaROSSA: I am asking a hypothetical question, your Honor.

THE COURT: But you can't bring me into this. You try your own case.

MR. LaROSSA: Sorry. I think it is quite relevant to what I am asking.

THE COURT: I don't think it is -- the way you start your question, anything can possibly be material. Now, if there is something that you want, I suggest you discuss it with Mr. Lavin and see if you can work it out without bringing the witness and the Court into it.

MR. LaROSSA: No, it has nothing to do with the note.

THE COURT: Then it has nothing to do with whether I declare a recess. Ask him what you want to know.

Q If you heard the judge hand me a package right now, and said, "Take this stuff up to my chambers," and I walked out of this courtroom with that package --

THE COURT: I asked you not to bring me into it, and I don't have stuff like that.

Q -- would you assume that there was something in that package like heroin or cocaine?

MR. LAVIN: Objection to the question.

THE COURT: Sustained.

Q If you saw me give the package to one of the other lawyers and I said, "Take this stuff to my office," --

MR. LAVIN: Objection.

THE COURT: I think we will sustain that objection, too.

Q If you heard two women in a grocery store and one said to the other, "Take this stuff and hold it for me," and you, as a police officer, were present and overheard it, would you arrest either of those people because they had narcotics on them?

MR. LAVIN: Objection.

THE COURT: Overruled.

A No.

Q "Stuff" can mean almost anything, can't it, Mr. Lino?

A Yes.

Q It is a word that is acceptable in our language, is it not?

A Yes, it is.

Q Do you know what "stuff" means to a gambler, Mr.

Lino?

A No, I don't.

Q In your activities as a police officer, have you ever heard of gambling records called "stuff"?

A No.

Q Have you ever worked the gambling squad?

A No.

Q Have you ever done any kind of police work other than narcotics work?

A Yes.

Q Have you ever heard the word "stuff" used in relation to other crimes?

A I imagine so.

Q So your determination of what the word "stuff" means, then, would depend upon what squad you are working in, right, Mr. Lino?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained as to form.

Q Your assumption that the word "stuff" meant heroin was based upon what you were taught in narcotics school; right?

A Partially, yes.

Q Did you ever write down 50 thou or 50 thousand on any report?

THE COURT: Well, he wrote down 50. The question is, did you write down "thou." Is that what you want to know?

MR. LaROSSA: May I confer for a moment?

(Mr. LaRossa and Mr. Lavin confer.)

THE COURT: What's happening to that last question?

MR. LaROSSA: I thought you sustained the objection. I'm sorry.

THE COURT: No, I merely called your attention to the fact that you read 50, and I assumed that what you meant to say was, did you ever write the word "thou" down.

MR. LaROSSA: Yes, sir. I will withdraw the question.

THE COURT: All right.

Q Did you ever use that walkie-talkie on that occasion on August 16 to ask them, the party on the other end, to move the vehicle?

A Yes, we talked about it.

Q How many times?

A Once.

Q Tell me, Mr. Lino, did this walkie-talkie of yours squeak?

A Did it squeak?

Q Do you know what I mean by squeak?

A No. What do you mean by squeak?

Q Did it make a squeaking noice when you spoke or received?

A No.

Q Have you used walkie-talkies other than that occasion?

A Many times.

Q Have you ever heard a walkie-talkie squeak or make a shrill noise?

A Yes.

Q This one did not?

A No.

Q Was there something special about this walkie-talkie?

A No.

Q Was it just a stock walkie-talkie that you received from the police department?

A Yes.

Q Did you do anything to it that would change it from a normal walkie-talkie?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q In your experience don't all walkie-talkies squeak?

A No.

Q They don't make any noise?

A Of course, yes, they do.

Q What kind of noise do they make?

A When you talk through them.

Q Other than your voice.

A If you put two of them together they will squeak. That's what I was talking about.

Q This one made no squeaking sound of any kind?

A No.

Q Tell me, did you receive any transmissions on that walkie-talkie when these people were outside the fender?

A Yes.

Q You heard the transmission, didn't you?

A That's correct.

Q Do you know whether someone outside the car heard that same transmission?

A No.

Q When you spoke into the walkie-talkie, were there times when you spoke into the walkie-talkie when people were standing right outside the fender?

A Yes.

MR. LaROSSA: I have that one open item left. If I could pass to that.

THE COURT: Why don't you let somebody else go on.

Continue your examination, if necessary, later.

MR. LaROSSA: All right.

THE COURT: Any questions, Mr. Duke?

MR. DUKE: No questions, your Honor.

THE COURT: Any questions, Mrs. Rosner?

MRS. ROSNER: No, your Honor.

THE COURT: Any questions, Mr. Peluso?

MR. PELUSO: No questions.

THE COURT: Any questions, Mr. Mitchell?

MR. MITCHELL: Your Honor, may I reserve my cross-examination dependent upon your Honor's ruling on my request? Depending on whether you allow it and the outcome?

THE COURT: As far as your request is concerned, I wonder whether you are adverting to the testimony as given here. Is this a general request or is there anything in the testimony here that indicates this inquiry in Court's Exhibit 31?

MR. MITCHELL: It is a specific inquiry, not on the context or the words, but on the ability.

THE COURT: Let me just make a note at the bottom of Court's Exhibit 31 and see whether this doesn't cover -- at least communicate to you -- what I have in mind.

MR. MITCHELL: Your Honor, could I just give you one word -- I don't want the witness to hear it.

(Mr. Mitchell writes on Court's Exhibit 31.)

MR. LaROSSA: While he is writing that, may I ask one more question?

THE COURT: Yes.

MR. LaROSSA: Mr. Lino, do you know what type of walkie-talkie that is, who manufactures it?

THE WITNESS: I think it is a Motorola.

MR. LaROSSA: Thank you.

THE COURT: Mr. Mitchell, I have addressed an inquiry to you on the bottom of Court's Exhibit 31, which you may answer perhaps either yes or no.

MR. MITCHELL: I can't answer yes or no.

THE COURT: All right.

I think to accomplish this unheard-of situation, unheard of, that is, as far as you are concerned, members of the jury, why don't you take a five-minute recess while I work out the legal details here, and the lawyers won't be embarrassed.

On the other hand, may I suggest this: Unless you want to go out for a recess, let me take the lawyers in the back room and you stay comfortable.

I will take them back there. If you do want to go out, you may, but otherwise, just be comfortable and I will dispose of it inside.

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